(23,672)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 165.

THE PRODUCERS OIL COMPANY, PLAINTIFF IN ERROR,

vs.

LYDIA HANZEN, SAM W. MASON, DILLARD P. EUBANK, ROBERT L. STRINGFELLOW, AND EARL H. BARNES.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

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1 PRODUCERS OIL CO.
VS.
L. HANSZEN et al.

Petition and Order.

To the Honorable the Judges of the First Judicial District Court, in and for the Parish of Caddo, State of Louisiana:

The petition of the Producers' Oil Company, a corporation organized under the laws of the State of Texas, domiciled at Houston, Harris County, in said State, with due respect showeth:

That on July 6th, 1874, the Government of the United States sold to Thomas H. Pitts lots one and two of section four of Township Twenty, North, Range Sixteen West, situated in the Parish of Caddo, State of Louisiana, forming a projection of land surrounded on three sides by the waters of James Bayou, a navigable stream and known as "Wilson's Point;" that said Thomas H. Pitts went into possession of said land at the time of said sale, and he and his successors in title remained in open and undisturbed possession thereof down to April 2d, 1910, that on April 15th, 1910,
2 your petitioner by notarial act recorded in Conveyance office of Caddo Parish in Book 63, page 394, purchased said property from J. S. Noel, who held title and possession thereof under Thos. H. Pitts, that on April 2d, 1910, the defendants, to wit, Lydia Hanzen, a femme sole, Sam W. Mason, Dillard P. Eubank, Robert L. Stringfellow and H. Earl Barnes, all residents of Caddo Parish, Louisiana, without the knowledge of the said Noel, who was in possession of said property, entered upon a part of said Lot Number One aforesaid, and took possession thereof by building a wire fence around it and by placing a keeper thereon, so that when your petitioner came to reduce the whole of said property to actual possession under its deed as aforesaid which by law vested him with the Civil possession, he found the defendants in possession as aforesaid; that your petitioner is subrogated in law to the right of possession of his vendor and is entitled to have and maintain against the defendants this possessory action.

That the portion of Lot Number One, so unlawfully seized upon by the defendants, is worth more than the sum of Twenty-five Hundred Dollars.

Your petitioner avers that it has good ground to apprehend that the defendants may make use of their possession to dilapidate or to waste the fruits and revenues produced by said property, or to convert them to their own use.

Further avers that a writ of sequestration is necessary to protect plaintiff's rights in the premises.

Wherefore the annexed affidavit considered plaintiff prays that on its giving bond in a sum to be fixed by the Court a writ of Sequestration may issue directing the Sheriff of the Parish of Caddo to

sequester and take into his possession all that portion of land known as Wilson's Point now in the possession of defend-
3 ants, and figured and described in the surveys and map of the land office of the United States as part of Lot No. 1 of Sec. 4, T. 20, N. R. 16 West, and to hold the same until the further order of this Court.

Petitioner further prays that the defendants, to wit, L. Hanzen, a femme sole, S. W. Mason, D. P. Eubank, R. L. Stringfellow and H. E. Barnes, may be severally cited, to answer this demand and that after due proceedings had, the said writ of sequestration may be made perpetual and there may be judgment in favor of your petitioner declaring that your petitioner is entitled to the possession of said property, and ousting the defendants from said possession.

Petitioner further prays for costs and for general relief.

JAMES L. AUTREY.

FARRAR, JONAS, GOLDBOROUGH & GOLDBERG,
FRANK J. LOONEY,
Attorneys for Petitioner.

STATE OF LOUISIANA,
Parish of Caddo, ss:

J. C. McCue, being duly sworn, deposes and says that he is the Vice President of the Producers Oil Company, and that all the facts and allegations in the foregoing petition are true and correct.

J. C. McCUE.

Sworn to and *de*-scribed, before me this first day of July, 1910.

[SEAL.] F. A. LEONARD, *Clerk.*

4 *Order.*

Let the writ of sequestration issue herein as prayed for on plaintiff's giving bond according to law in the sum of ($10,000.00) Ten Thousand Dollars.

T. F. BELL,
Judge First Judicial District Court.

July 1st, 1910.

Endorsed: Filed July 1st, 1910. F. A. Leonard, Clerk. Filed in evidence 13843, 12.19.10. A. S. Hardin, Dy. Clk.

In 1st Jud. Dist. Court of Caddo Parish, Louisiana.

No. 13843.

PRODUCERS OIL CO.
v.
L. HANSZEN et als.

Answer.

In the above entitled and numbered cause, now come the defendants and for answer to the plaintiff's petition, deny generally and specially all of the allegations therein contained, except as may be hereinafter admitted.

For further answer, your respondents deny that they are or ever have been in possession of any part of Lot One of Section Four, Township Twenty, North of Range Sixteen West; but that your respondents are and have been since the 2nd day of April, 1910, in the sole and legal possession of the following described property, which at said date belonged to the United States of America, to wit:

Eighty-seven and nine-tenths (87.9) acres of land, situated in Sections Three and Four (3 & 4) of Township Twenty (20) North of Range Sixteen (16) West, Caddo Parish, Louisiana, and particularly described as follows, to wit:

Beginning 56 chains West of the Southeast corner of Section 3, Township 20, Range 16, at a stake, run thence West 48½ chains, thence North 2 degrees East 6 chains, thence North 15 degrees West 3 chains, thence North 47½ degrees East 2.5 chains, thence North 16 degrees West 2.5 chains, thence South 86½ degrees West 2.5 chains, thence North 17 degrees 18′ West 2.5 chains, thence North 10 degrees East 2.5 chains, thence North 84 degrees 30′ West 3.75 chains, thence North 2 degrees 54′ East 2.2 chains, thence North 51 degrees 20′ East 30 chains, thence North 52 degrees 27′ East 7.61 chains, thence North 1 degree 23′ West 5.33 chains, thence North 74 degrees 36′ East 10.00 chains, thence South 25 degrees 06′ East 6.00 chains, thence South 9 degrees 55′ East 3.50 chains, thence South 40 degrees 50′ East 21.00 chains, thence South 66 degrees 40′ East 6.50 chains, thence North 81 degrees 30′ East 3.5 chains, thence South 83 degrees 40′ East 8.00 chains, thence South 18 degrees 40′ East 6.25 chains to the place of beginning; which said property your respondents located under the laws of the United States relative to the location of mining lands and upon which they have made a discovery of oil and gas, and are, therefore, entitled to the full use and enjoyment and to a patent from the United States.

Your respondents deny that the plaintiff, or any of its ancestors in title ever had or claimed possession to any part of the property so located by your respondents; but, that, on the contrary, your respondents aver that the said land was never in the possession of any person until the location by them.

Your respondents aver that Thomas H. Pitts purchased from the United States, among other property, Lot One of Section Four, Township Twenty North of Range Sixteen West, containing 12.84 acres and that he paid for the same with military land
6 warrants, as containing that acreage; that the said Lot One of Section Four is figured and described on the surveys of the United States by certain metes and bounds, shown on the said plat, the eastern boundary of said lot, as well as the other boundaries thereof, being shown on the said map; that the East line of said lot which is the boundary between the land of respondents' and that of plaintiff, did not and does not denote the banks of any body of water, but that on the contrary, that the said line was run through the hills as the line of boundary of the said lot; that the land of which your respondents are in possession and which they located under their mineral filing aforesaid, is high land, not subject to overflow at any time, and which never constituted any part of any lake or bayou and which was left out of the surveys of the United States and which remained the property of the government until said location had been made thereon by your respondents.

Wherefore, your respondents pray that the plaintiff's demands be rejected, at its cost, and that your respondents be recognized as the owners of the property above described and maintained in the possession thereof, and that your respondents' right to sue the plaintiff and its surety on its sequestration bond for the wrongful issuance of the writ of sequestration issued herein, be reserved; and for all orders and decrees necessary; and for general relief.

THIGPEN AND HEROLD,
Attorneys for Defendants.

Endorsed: Filed November 26th, 1910. A. S. Hardin, Dy. Clk.

7 *Sequestr-ia-n Bond.*

Know all men by these presents: That we, Producers Oil Company of Houston, Houston County, Texas, as principal, and the United States Fidelity and Guaranty Co. of Maryland as security, are held and firmly bound unto F. A. Leonard, Clerk of the First Judicial District Court of Louisiana for Caddo Parish, La., in the full sum of Ten Thousand ($10,000) Dollars for payment of which, well and truly to be made, we bind ourselves, our successors and legal representatives firmly and in solido by these presents:

Dated at Shreveport, La., this 1st day of July, A. D. 1910. The condition of the above obligation is such that, whereas, the above bounden, Producers Oil Company has applied for and obtained an order for a writ of Sequestration directed against Lydia Hanszen, a femme sole, Sam W. Mason, Dillard P. Eubank, Robert L. Stringfellow and H. Earl Barnes.

Therefore, if the said Producers Oil Company shall well and truly pay and satisfy such damages as the said L. Hanszen, Sam W. Mason, S. P. Eubank, R. L. Stringfellow and H. E. Barnes may

sustain or recover against said Producers Oil Company in case it should be decided that the writ of sequestration was wrongfully obtained, then this obligation to be null and void, otherwise to remain in full force and effect.

PRODUCERS OIL COMPANY,
By J. C. McCUE, *Vice Pres't.*
THE UNITED STATES FIDELITY & GUARANTY CO. OF MARYLAND,
By WM. H. FORD, *Att'y in Fact.*

Endorsed: Filed July 1st, 1910. F. A. Leonard, Clerk.

8 In 1st Dist. Court, Parish of Caddo.

No. 13843.

PRODUCERS OIL CO.
v.
L. HANSZEN et als.

Citation.

The State of Louisiana to Miss Lydia Hanszen:

You are hereby cited to appear in the office of the Clerk of the said Court, in the City of Shreveport, Parish aforesaid, and comply with the demand contained in the petition of which a copy is hereby annexed, or file your answer thereto in writing in the office of the said Clerk, in ten days after the service hereof, with one additional day for every ten miles between your residence and the office of the Clerk, provided, however, that in no case shall the delay exceed fifteen days.

Witness, the Honorable Judges of said Court, this 1st day of July, Anno Domini 1910.

F. A. LEONARD, *Clerk.*

Received the within citation on the 1st day of July, 1910, and on the 1st day of July, 1910, served the same on the within named Miss Lydia Hanzsen at her office — miles from the Court House in the Parish of Caddo, State of Louisiana, by handing a certified copy hereof, together with a certified copy of plaintiff's petition to Miss Lydia Hanzsen in person.

J. P. FLOURNEY,
D'y Sheriff.

Endorsed: Filed July 5th, 1910. F. A. Leonard, Clerk.

9 In 1st Dist. Court, Parish of Caddo.

No. 13843.

PRODUCERS OIL CO.
v.
L. HANSZEN et als.

Citation.

The State of Louisiana to Sam W. Mason of the Parish of Caddo:

You are hereby cited to appear in the office of the Clerk of the said Court, in the City of Shreveport, Parish aforesaid, and comply with the demand contained in the petition, of which a copy is here*by* annexed, or file your answer thereto in writing, in the office of the said Clerk, in ten days after the service hereof, with one additional day for every ten miles between your residence and the office of the Clerk, provided, however, that in no case shall the delay exceed fifteen days.

Witness, the Honorable Judges of said Court, this 1st day of July, Anno Domini 1910.

F. A. LEONARD, *Clerk.*

Received the within citation on the 1st day of July, 1910, and on the 1st day of July, 1910, served the same on the within named Sam W. Mason at his office — miles from the Court House, in the Parish of Caddo, State of Louisiana, by handing a certified copy hereof, together with a certified copy of plaintiff's petition to Sam W. Mason in person.

J. P. FLOURNOY,
Dep't Sheriff.

Endorsed: Filed July 5th, 1910. F. A. Leonard, Clerk.

10 In 1st Dist. Court, Parish of Caddo.

No. 13843.

PRODUCERS OIL CO.
v.
L. HANSZEN et als.

Citation.

The State of Louisiana to Dillard P. Eubank:

You are hereby cited to appear in the office of the Clerk of the said Court, in the City of Shreveport, Parish aforesaid, and comply with the demand contained in the petition, of which a copy is here*by* annexed, or file your answer thereto in writing, in the office of the

said Clerk, in ten days after the service hereof, with one additional day for every ten miles between your residence and the office of the Clerk, provided, however, that in no case shall the delay exceed fifteen days.

Witness, the Honorable Judges of said Court, this 1st day of July, Anno Domini 1910.

F. A. LEONARD,
Clerk.

Received the within Citation on the 1st day of July, 1910, and on the 1st day of July, 1910, served the same on the within named D. P. Eubank at his office — miles from the Court House, in the Parish of Caddo, State of Louisiana, by handing a certified copy hereof, together with a certified copy of Plaintiff's petition to D. P. Eubank in person.

J. P. FLOURNOY, JR.,
D'y Sheriff.

Endorsed: Filed July 5th, 1910. F. A. Leonard, Clerk.

11 In 1st Dist. Court, Parish of Caddo.

No. 13843.

PRODUCERS OIL CO.
v.
L. HANSZEN et als.

Citation.

The State of Louisiana to H. E. Barnes of the Parish of Caddo:

You are hereby cited to appear in the office of the Clerk of the said Court, in the City of Shreveport, Parish aforesaid, and comply with the demand contained in the petition, of which a copy is hereby annexed, or file your answer thereto in writing, in the office of the said Clerk, in ten days after the service hereof, with one additional day for every ten miles between your residence and the office of the Clerk, provided, however, that in no case shall the delay exceed fifteen days.

Witness, the Honorable Judges of said Court, this 1st day of July, Anno Domini 1910.

F. A. LEONARD,
Clerk.

Received this within Citation on the 1st day of July, 1910, and on the 2d day of July, 1910, served the same on the within named H. E. Barnes at the City, — miles from the Court House, in the Parish of Caddo, State of Louisiana, by handing a certified copy hereof, together with a certified copy of plaintiff's petition, to H. E. Barnes in person.

A. H. HAYNES,
D'y Sheriff.

Endorsed: Filed July 5th, 1910. F. A. Leonard, Clerk.

12 In 1st Dist. Court, Parish of Caddo.

No. 13,843.

PRODUCERS OIL CO.
v.
L. HANSZEN et als.

Citation.

The State of Louisiana to R. L. Stringfellow of the Parish of Caddo:

You are hereby cited to appear in the office of the Clerk of the said Court, in the City of Shreveport, Parish aforesaid, and comply with the demand contained in the petition, of which a copy is hereby annexed, or file your answer thereto in writing, in the office of the said Clerk, in ten days after the service hereof, with one additional day for every ten miles between your residence and the office of the Clerk, provided, however, that in no case shall the delay exceed fifteen days.

Witness, the Honorable Judges of said Court, this 1st day of July, Anno Domini 1910.

F. A. LEONARD,
Clerk.

Received the within Citation on the 1st day of July, 1910, and on the 1st day of July, 1910, served the same on the within R. L. Stringfellow at — miles from the Court House, in the Parish of Caddo, State of Louisiana, by handing a certified copy hereof, together with a certified copy of plaintiff's petition, to R. L. Stringfellow in person.

W. W. OTTS,
Dep'ty Sheriff.

Endorsed: Filed July 5th, 1910. F. A. Leonard, Clerk.

13 In 1st Judicial District Court of Caddo Parish, Louisiana.

No. 13843.

PRODUCERS OIL CO.
v.
L. HANSZEN et als.

Bond.

THE STATE OF LOUISIANA,
Parish of Caddo, ss:

Know all men by these presents: That we, Lydia Hanzen, R. L. Stringfellow, H. Earl Barnes, S. W. Mason and D. P. Eubank, as principals, and Southwestern Surety Insurance Company of Okla-

homa as surety, are held and firmly bound in colido unto and in favor of J. P. Flournoy, Sheriff of Caddo Parish, Louisiana, in the full sum of Ten Thousand and no/100 ($10,000.00) Dollars, for the payment of which well and truly to be made, we bind ourselves, our heirs, successors and assigns firmly and in colido by these presents.

Dated at Shreveport, La., this the 7th day of July, A. D. 1910.

The condition of the above obligation is such that, whereas, on the 1st day of July, 1910, the Producers Oil Company caused to be issued from the First Judicial District Court of Caddo Parish, Louisiana, a writ of sequestration, ordering the Sheriff aforesaid to sequester and take into his possession lands possessed by the said principals situated in Section Four, Township Twenty North, Range Sixteen West, Caddo Parish, Louisiana, which the plaintiff in the said writ claimed to be a part of Lot 1 of said Section, according to the government survey; and, whereas, on the motion of the said principals, it was ordered by the Hon. T. F. Bell, Judge of the said First Judicial District Court, on the 5th day of July, 1910, that the said writs be dissolved and set aside upon the said principal's furnishing bond conditioned according to law, in the sum of Ten Thousand Dollars.

14 Now, therefore, if the said defendants, principals in this bond, while in possession of said property, shall not waste the said property and if they shall make faithful restitution of all the fruits that they may have received since the demand of the plaintiff, or of their value, in the event of their being cast in the said suit, then this bond be null and void; otherwise, to remain in full force and effect.

R. L. STRINGFELLOW,
SAM W. MASON,
D. P. EUBANK,
L. HANSZEN,
H. E. BARNES,
By L. HASZEN, *Agt. and Att'y in Fact.*
SOUTHWESTERN SURETY INSURANCE CO. OF OKLAHOMA,
By J. H. BODENHEIMER,
Agt. and Att'y in Fact.

Bond accepted and property released.

J. P. FLOURNOY, *Sheriff.*

July 7th, 1910.

Endorsed: Filed July 7th, 1900. S. O. Williams, D'y Cl'k. Filed in Evidence in 13843 12/19/10. A. S. Hardin, D'y Cl'k.

15 In 1st Dist. Court, Parish of Caddo.

No. 13843.

PRODUCERS' OIL COMPANY
v.
L. HANSZEN et als.

Writ of Sequestration.

The State of Louisiana to the Sheriff of Caddo Parish, Greeting:

Whereas, due proof hath been made by plaintiff company, that plaintiff company was in possession, through itself and its ancestors in title of Lots One and Two of Sec. 4, Township 20 North, Range 16 West, Caddo Parish, Louisiana, forming a projection of land surrounded on three sides by the waters of Jeems Bayou and known as Wilson's Point, and that the defendants entered upon a part of Lot No. 1 aforesaid and disturbed the possession of petitioners on April 2nd, 1910, at which time J. S. Noel from whom petitioner derived title, held the open and undisputed possession, and that said disturbance or possession has continued since April 15, 1910, at which date said J. S. Noel transferred said property to plaintiff company and that petitioner has good ground to apprehend that defendants may make use of their possession to dilapidate or waste the fruits and revenues produced by said property or to convert them to their own use, and that writs of sequestration are necessary to protect plaintiff's right in the premises.

Now, therefore, you are hereby commanded to seize, sequester and take into your possession that portion of the land above described in possession of defendants and to hold the same; and that you give notice of this procedure, and make return of this writ stating the manner in which you have executed the same, before our said Court, on the first day of next term thereof.

Witness, the Honorable Judges of said Court, this 1st day of July, A. D. 1910.

F. A. LEONARD, *Clerk.*

16 Endorsed: Received the within Writ of Sequestration on the 1st day of July, 1910, and on the same date thereof, I served the same on the within named Sam W. Mason, D. P. Eubank, Miss Lydia Hanzsen, in the City of Shreveport, Caddo Parish, Louisiana, by handing to each of the above named parties, a certified copy hereof, in person.

J. P. FLOURNOY, JR.,
D'y Sheriff.

Received the within writ of Sequestration on the 1st day of July, and on the 2d day of July, 1910, I served the same on the within

named H. E. Barnes, in the City of Shreveport, Caddo Parish, La., by handing the said H. E. Barnes a certified copy hereof, in person.

A. F. HAYNES,
D'y Sheriff.

Received the within Writ of Sequestration on the 1st day of July, 1910, and on the 2d day of July, 1910, I served the same on the within named R. L. Stringfellow, in the City of Shreveport, Caddo Parish, Louisiana, by handing a certified copy hereof to R. L. Stringfellow in person.

W. W. OTTS,
D'y Sheriff.

Received the within Writ of Sequestration on the 2d day of July, 1910, and on same date hereof, in further execution of the within Writ of Sequestration, I have seized and taken into my official possession the property herein described.

A. C. GRAY,
D'y Sheriff.

Filed July 5th, 1910. F. A. Leonard, Clerk.

17 In 1st Judicial District Court of Caddo Parish, Louisiana.

No. 13843.

PRODUCERS OIL CO.
v.
L. HANSZEN et als.

Motion to Dissolve.

In the above entitled and numbered cause, now come Lydia Hanzsen, Sam W. Mason, Dillard P. Eubank and Robert L. Stringfellow and H. Earl Barnes, who are made defendants herein and, without answering or in any manner appearing to the plaintiff's petition, move to dissolve the writs of sequestration herein issued, for the following reasons, to wit:

1st. That plaintiff's petition discloses no cause or right of action against your defendants for the relief therein prayed for.

2d. Plaintiff's petition shows no right to the writs of sequestration.

3d. That the affidavit to plaintiff's petition is insufficient.

4th. That plaintiff's petition fails to disclose any authority for the bringing of said suit.

Wherefore, your movers, reserving their rights to move to dissolve the said writs for other and additional reasons, and reserving also their right of action for damages against the said plaintiff on its sequestration bond, moves that such writs of sequestration be dissolved and set aside.

And for general relief.

THIGPEN & HEROLD,
Attorneys for the Defendants.

Endorsed: Filed July 2d, 1910. A. S. Hardin, D'y Cl'k.

18 In 1st Dist. Court of Caddo Parish, Louisiana.

No. 13843.

PRODUCERS OIL CO.
v.
L. HANSZEN et als.

Motion to Bond.

In the above entitled and numbered cause, now come the defendants, and reserving all of their rights under the motion to dissolve the writs of sequestration hereinbefore filed, and without answering plaintiff's petition, appearing herein solely for the purpose of this motion, respectfully show:

That on the 2d day of April, 1910, your movers took possession of and located under the placer mining laws of the United States, a tract of land belonging to the United States in Sections Three and Four (3, 4), of Township Twenty (20) North, Range Sixteen (16) West, Caddo Parish, Louisiana, containing Eighty-seven and nine-tenths (87.9) acres, and particularly described as follows, to wit:

Beginning 56 chains West of the Southeast corner of Section 3, Township 20, Range 16, at a stake, run thence West 48½ chains, thence North 2 degrees 6 chains, thence North 15 degrees West 3 chains, thence North 47½ degrees East 2.5 chains, thence North 16 degrees West 2.5 chains, thence South 86 degrees 2.5 chains, thence North 17 degrees 18′ West 2.05 chains, thence North 10 degrees East 2.5 chains, thence North 84 degrees 30′ West 3.75 chains, thence North 2 degrees 54′ East 2.2 chains, thence North 51 degrees 20′ East 30 chains, thence North 52 degrees 27′ East 7.61 chains, thence North 1 degree 23′ West 5.33 chains, thence North 74 degrees 36′ East 10.00 chains, thence South 25 degrees 06′ East 6.00 chains, thence South 9 degrees 55′ East 3.50 chains, thence South 40 degrees 50′ East 21.00 chains, thence South 66 degrees 40′ East 6.50 chains, thence North 81 degrees 30′ East 3.5 chains, thence
19 South 83 degrees 40′ East 8.00 chains, thence South 18 degrees 40′ East 6.25 chains to the place of beginning, with stakes at each corner thereof.

Your movers show that under their mineral location as aforesaid, actual operations for the development of said land for oil and gas have been begun on the said premises and that your movers were at the date of the issuance of the writs herein and are now, through their lessee, in the actual, physical possession of the said property.

Your movers show that the Producers Oil Company, a corporation under the laws of the State of Texas, doing business in the State of Louisiana and represented in said State by its Vice President, J. C. McCue, is the owner, by purchase from J. S. Noel, of Lot One of Section 4, Township 20 North, Range 16 West, which lies immediately adjacent to your movers' said land.

Your movers show that no part of the land so located by them is

situated in Lot One of Section 4, Township 20 North, Range 16 West, and that they in no manner interfered with the possession of the plaintiff's property, but that they have, pursuant to the laws of the United States filed a valid mineral location upon land belonging to the Government of the United States and which never was in the possession of the plaintiff or of its ancestors in title in any manner, either actual or civil.

Your movers show that they are entitled to have the writs of sequestration herein issued dissolved and set aside in accordance with law.

Wherefore, they move and pray the Court to order the dissolution of said writs of sequestration, upon their furnishing bond, with good and solvent security, conditioned according to law, in such amount as the Court may deem proper, and that all of their rights under the previous motion to dissolve be reserved. And for general relief.

THIGPEN & HEROLD,
Attorneys for Defendants.

Endorsed: Filed July 7th, 1900. S. O. Williams, D'y Cl'k. Filed in ev. 12/19/10.

In 1st Jud. Dist. Court.

No. 13843.

PRODUCERS OIL CO.
v.
L. HANSZEN et als.

Prayer for Oyer.

In the above entitled and numbered cause, now come the defendants and, without answering or in any wise appearing herein except for the purpose of this motion, pray for oyer of the act of sale from the government of the United States to Thomas H. Pitts, the act of sale from J. S. Noel to plaintiff and the "map of the Land Office of the United States," referred to in plaintiff's petition.

Your mover- shows that they are entitled to oyer of the said exhibits and that they cannot properly answer without oyer thereof.

Wherefore, they pray that an order issue commanding plaintiff to produce and file same in Court as part of its petition, within ten days, and that in the event of the failure or refusal of plaintiff to comply therewith, that its suit be dismissed, and for general relief.

THIGPEN AND HEROLD,
Attorneys for Defendants.

Endorsed: Filed Oct. 1, 1910. J. H. Levy, D'y Cl'k.

21 In 1st Jud. Dist. Court of Louisiana.

No. 13843.

PRODUCERS OIL CO.

v.

L. HANSZEN et al.

Judgment.

In this case, after due hearing had, by reason of the law and the evidence being in favor of the plaintiff, the Producers Oil Company, and against the defendants, Lydia Hanzsen, femme sole, Sam W. Mason, Dilliard P. Eubank, Robert L. Stringfellow and H. Earl Barnes.

It is ordered, adjudged and decreed, that plaintiff is entitled to be maintained in possession of all of Lot Number One, Section Four, Township Twenty, Range Sixteen, Caddo Parish, Louisiana, and that the tongue of land, on which defendants and their lessee have drilled an oil well, projecting North, and bounded North, East and West by Jeems Bayou, is a constituent and component part of Lot Number One, the boundary of said lot Number One being the water line of Jeems Bayou; it being the purpose of this judgment to fix Jeems Bayou as the boundary of said lot without regard to any arbitrary lines of survey.

It is further ordered, adjudged and decreed that defendants are mere trespassers on said Lot Number One, and the writ of sequestration sued out by plaintiff herein is made perpetual, and it is ordered that such writs of possession issue as are necessary to carry out this judgment.

It is further ordered, adjudged and decreed, that defendants are condemned, in solido to pay all costs of this suit.

This done, read and signed in open Court, at Shreveport, Louisiana, this 8th day of March, 1911.

T. F. BELL,
District Judge.

Endorsed: Filed March 8th, 1911. D. P. Eubank, Dy. Clk.

22 No. 13843.

PRODUCERS OIL CO.

v.

L. HANSZEN et al.

Motion for New Trial.

Now comes defendants and, showing that the judgment herein rendered is contrary to the law and to the evidence adduced on trial hereof,

Move that they be granted a new trial, and for general relief.

THIGPEN & HEROLD,
Attorneys.

Endorsed: Filed March 1st, 1911. S. P. Eubank, Dy. Clk.

1st. Jud. Dist. Court.

No. 13843.

PRODUCERS OIL CO.
v.
L. HANSZEN et al.

Motion for Appeal.

In the above entitled and numbered cause now come the Defendants and showing that the judgment herein rendered is manifestly erroneous, pray that they be granted an appeal suspensive and devolutive, returnable to the Honorable Supreme Court of Louisiana according to law. That the return day of said appeal be fixed and that the amounts of suspensive and devolutive appeal bonds be fixed.

THIGPEN & HEROLD,
Attorneys for Defendants.

Endorsed: Filed March 8th, 1911. D. P. Eubank, Dy. Clk.

23 *Appeal Bond.*

STATE OF LOUISIANA,
Parish of Caddo:

Know All Men By These Presents: That we, Lydia Hanzsen, R. L. Stringfellow, S. W. Mason, H. E. Barnes and D. P. Eubank, as principal, and S. L. Herold as surety, are held and firmly bound unto F. A. Leonard, Clerk of the Fist Judicial District Court, Caddo Parish, Louisiana, in the full sum of Five Hundred and no/100 Dollars, for payment of which, well and truly to be made, we bind ourselves, our heirs and legal representatives firmly and in solido by these presents.

Dated at Shreveport, La., this 9th day of March, 1911.

The condition of the above obligation is such, that, whereas, the above bounden, L. Hanzsen et al., has applied for and obtained an order for a suspensive and devolutive appeal from the judgment lately rendered against them by the Honorable First Judicial District Court, Caddo Parish, Louisiana, in the case of Producers Oil Company vs. L. Hanzsen et al., No. 13,843 on the docket of said Court, returnable to the Honorable Supreme Court of Louisiana, at New Orleans, Louisiana, according to law.

Therefore, if the said Lydia Hanzsen et al. shall well and truly prosecute this said appeal, and shall satisfy whatever judgment may be rendered against them thereon, or the same be satisfied by the proceeds of the sale of their estate, real or personal, then

this obligation to be null and void, otherwise to remain in
24 full force and effect, and the said surety be liable in his place.

LYDIA HANZSEN,
R. L. STRINGFELLOW,
H. E. BARNES,
S. W. MASON,
D. P. EUBANK,
By THIGPEN & HEROLD,
Their Attorneys.
S. L. HEROLD, *Surety.*

Endorsed: Filed March 9th, 1911. F. A. Leonard, Clerk.

Cash Sale.

"A."

THE STATE OF LOUISIANA,
Parish of Caddo:

Be It Known, That this day before me, F. A. Leonard, Notary Public in and for said Parish, duly commissioned and sworn, came and appeared James S. Noel, husband of Mrs. Fannye Noel, born Banggus, who declared that he does by these presents, grant, bargain, sell, convey and deliver, with full guarantee of title, and with complete transfer and subrogation of all rights and actions of warranty against all former proprietors of the property herein conveyed, unto The Producers Oil Company, domiciled at Houston, Texas, herein represented by J. C. McCue, agent, the following described property, to wit: Lots One and Two (1 and 2) in
25 Section Four (4), and Lots One and Two, Three and Four (4) of Section Nine (9), and the Northwest quarter of the Northeast quarter of Section Nine (9), all in township Twenty (20) North, Range Sixteen (16) West, in the Parish of Caddo, State of Louisiana, containing 163.88 acres, more or less.

To Have and To Hold said described property unto said purchaser, its successors, heirs and assigns forever.

This sale is made for the consideration of the sum of Fifty Thousand ($50,000.00) Dollars, cash in hand paid, receipt of which is hereby acknowledged.

The certificate of mortgages is hereby waived by the parties and evidence of the payment of taxes produced.

Done and passed at my office in said Parish of Caddo, in presence of T. F. Holt and A. B. Freyer, competent witnesses, on this the 15th day of April, A. D. Nineteen Hundred and Ten.

JAMES S. NOEL,
PRODUCERS OIL COMPANY,
By J. C. McCUE, *Agent.*

Attest:
T. F. HOLT,
A. B. FREYER.

F. A. LEONARD,
Clerk and Ex-Off. Recorder and Notary Public.

Endorsed: Filed and recorded April 15th, 1910. F. A. Leonard, Clerk and Ex-Off. Recorder. Recorded in Conveyance Book 63, page 294, of the records of Caddo Parish, Louisiana.

26 STATE OF LOUISIANA,
Parish of Caddo:

I hereby certify that the above and foregoing is a true and correct copy of the original act, as the same now appears on file and of record in my office.

Given under my hand and seal of office, this 18th day of November, 1910.

S. O. WILLIAMS,
D'y Cl'k and Ex-Off. D'y Recorder.

Filed in evidence in suit 13,843 November 19, 1910. A. S. Hardin, D'y Cl'k.

"B."

STATE OF LOUISIANA,
Parish of Caddo:

Be it known this day before me, E. Martin and J. H. Harris, competent witnesses, came Charles F. Walsch and wife, Mary F. Walsch, of Caddo Parish, La., who declare that they do by these presents, grant, bargain, sell, convey and deliver, with full guarantee of title and with complete transfer and subrogation of all rights and action of warranty against all former proprietors of the property presently conveyed unto James S. Noel of same residence, present accepting sale, the following described property, to wit:

The place known as the Wilson Point in Caddo Parish, La. Bought of E. Austion and the heirs of T. H. Pitts, deceased, as per family meeting and numbered as follows: The Northwest quarter of the Northeast quarter of Section Nine (9), Township
27 Twenty (20), Range Sixteen (16). Also Lots One, Two, Three and Four (1, 2, 3, 4) in fractional Section No. Nine (9), and lots One and Two (1 and 2) in Section of Section Four (4), Township Twenty (20), Range Sixteen (16), containing in all One Hundred and Sixty-three and 88/100 acres, all in Caddo Parish, Louisiana, together with all buildings and improvements thereon. To have and to hold said described property unto said purchaser, his heirs and assigns forever.

This sale is made for the consideration of the sum of Three Hundred Dollars cash, the receipt of which is hereby acknowledged. The certificate of mortgage and tax receipt are hereby waived by the parties.

Done and passed in said Parish of Caddo in the presence of E.

Martin and J. H. Harris, competent witnesses, on the 15th day of Feby., A. D. Eighteen Hundred and Eighty-four.

CHARLES F. WALSCH.
her
MARY F. × WALSCH.
mark
JAMES S. NOEL.

Attest:
E. MARTIN,
JOHN H. HARRIS.

STATE OF LOUISIANA,
Parish of Caddo:

Before me, the undersigned authority, personally appeared E. Martin, one of the witnesses to the foregoing act, who upon being duly sworn deposes and says that he saw the parties to the same sign it for the purposes, consideration therein set forth,
28 signed it himself as witnesses and saw the other witness sign it.

E. MARTIN.

Sworn to and subscribed before me this the 16th day of Feb'y, A. D. 1884.

W. G. BONEY,
D'y Cl'k and Ex-Off. D'y Recorder.

Endorsed: Filed and recorded Feb'y 16th, 1884. W. G. Boney, D'y Cl'k and Ex-Off. D'y Recorder.

STATE OF LOUISIANA,
Parish of Caddo:

I hereby certify that the above and foregoing is a true and correct copy of the original act as the same appears of record in Conveyance Book 2, page 115 of the Conveyance records of Caddo Parish, Louisiana.

Given under my hand and seal of office on this the 19th day of December, 1910.

W. M. LEVY,
D'y Cl'k and Ex-Off. D'y Recorder.

Filed in evidence in suit 13,843 December 19, 1910. A. S. Hardin, D'y Cl'k.

29 "C."

STATE OF LOUISIANA,
Parish of Caddo:

Be it known that this day before me, John A. Hicks, a Notary Public, in and for said Paris, duly appointed, commissioned and sworn, came and appeared Madam Ann Pitts, Tutrix of the minor

Lucy C. Pitts, a resident of said Parish and State, who declared that she does by these presents, in pursuance of the deliberations of a family meeting held Nov. 4th, 1880, authorizing her to do so, grant, bargain, sell, convey and deliver with full guarantee of title, and with complete transfer and subrogation of all rights and actions of warranty, against all former proprietors of the property presently conveyed unto Charles F. Walsch, of same residence, present accepting sale to following described property, to wit: The Northwest quarter of the Northeast quarter of Section No. Nine (9), in Township Twenty (20), Range Sixteen (16), containing Forty Acres, also lots Nos. One, Two, Three and Four (1, 2, 3, 4) in fraction Section No. Nine (9), in same Township and Range, Lots One and Two (1 and 2) in Section Four, same Township and Range, containing one hundred and twenty-three and 88/100 (123.88) acres, in all one hundred sixty-three and 88/100 (163.88) acres, together with all buildings and improvements thereon, situated in Caddo Parish, State of Louisiana. To have and to hold said described property unto said purchasers, his heirs and assigns forever.

This sale is made for the consideration of the sum of Two Hundred and Fifty Dollars cash, the receipt of which is hereby acknowledged. The certificate of mortgage and tax receipts are hereby waived by the parties.

Done and passed at my office in said Parish of Caddo, in the presence of W. G. Boney and E. C. McRady, competent witnesses, on this the 23d day of November, A. D. Eighteen Hundred and Eighty (1880).

ANNA PITTS,
Tutrix of the Minor.
LUCY PITTS.
CHAS. F. WALSCH.

Attest:
W. G. BONEY,
E. C. McRADY.

JOHN N. HICKS,
Notary Public.

Endorsed: Filed and recorded November 23rd, 1880. W. G. Boney, D'y Cl'k and Ex-Off. D'y Recorder.

STATE OF LOUISIANA,
Parish of Caddo:

I hereby certify that the above and foregoing is a true and correct copy of the original act as the same appears of record in Conveyance Book Y, page 501.

Given under my hand and seal of office, on this the 19th day of December, 1910.

W. M. LEVY,
D'y Cl'k and Ex-Off. D'y Recorder.

Filed in evidence in suit 13,843 December 19, 1910. A. S. Hardin, D'y Cl'k.

31 "D."

492.

Certificate.

No. 17860.

The United States of America to all to whom these presents shall come, Greeting:

Whereas, Thomas H. Pitts of Caddo Parish, Louisiana, has deposited in the General Land Office of the United States a Certificate of the Register of the Land Office at Natchitoches, Louisiana, whereby it appears that full payment has been made by the said Thomas H. Pitts according to the provisions of the Act of Congress of the 24th of April, 1820, entitled "An Act making further provision for the sale of the Public Lands," *for* and the Acts supplemental thereto, for the Northwest quarter of the Northeast quarter of Section Nine, in Township Twenty North, of Range Sixteen West, in the District of Lands subject to sale at Natchitoches, Louisiana, containing Forty Acres, according to the official plat of the survey of the said lands, returned to the General Land Office by the Surveyor General, which said tract has been purchased by the said Thomas H. Pitts.

Now Know Ye, That the United States of America, in consideration of the premises, and in conformity with the several acts of Congress in such cases made and provided have given and granted, and by these presents do give and grant, unto the said Thomas H. Pitts, and to his heirs, the said tract above described: To have and to hold the same, together with all the rights, privileges, immunities
32 and appurtenances, of whatsoever nature, thereunto belonging, unto the said Thomas H. Pitts and to his heirs and assigns forever.

In testimony whereof, I, Rutherford B. Hayes, President of the United States of America, have caused these letters to be patented and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the City of Washington, the first day of March, in the year of our Lord One Thousand Eight Hundred and Seventy-eight, and of the Independence of the United States the one hundred and second.

By the President,

R. B. HAYES,
By B. L. LANG,
Secretary.

[SEAL.]

S. W. CLARK,
Recorder of the General Land Office.

2 x 1797.
241797.
B.
S. E. H.

Department of the Interior,
General Land Office,
Washington.

Nov. 3, 1910.

I hereby certify that the annexed copy of patent is a true and literal exemplification from the record in this office.

In Testimony Whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the City of Washington, on the day and year above written.

[SEAL.] JOHN O'CONNELL,
Acting Recorder of the General Land Office.

33 Recorder Con. Book 66, page 413, on Nov. 21, 1910. S. O. Williams, D'y Cl'k and Ex-Off. D'y Recorder. Filed in evidence in suit number 13843, date 11/19/10. A. S. Hardin, Deputy Clerk.

"E."

United States
to
William Gayle.

R. & R. 1234. 165.

Patent.

The United States of America to all whom these presents shall come, Greeting:

Whereas, in pursuance of the Act of Congress, approved March 3, 1855, entitled "An Act in Addition to Certain Acts granting Bounty Land to certain Officers and Soldiers who have been engaged in the military service of the United States," there has ben deposited in the General Land Office, Warrant No. 34,916 for 120 acres, in favor of William Gayle, Private, Captain Pitts Company, Virginia Militia, War 1812, with evidence that the same has been duly located upon the Lots numbered one, two, three and four of Section Nine and the Lots numbered one and two of Section Four in Township Twenty North, of Range Sixteen West, of Louisiana, Meridian, in the District of Lands subject to sale at Natchitoches, Louisiana, containing One Hundred and Twenty-three acres and eighty-eight hundredths of an acre, according to the Official Plat of the Survey of said Lands returned to the General Land Office by the Sur-
34 veyor-General. The said warrant having been duly assigned to Thomas H. Pitts, in whose favor said tract has been located.

Now Know Ye, That there is therefore granted by the United States unto the said Thomas H. Pitts as assignee as aforesaid and to his heirs the tract of land above described: To have and to hold the said tract of land, with the appurtenances thereof, unto the said Thomas H. Pitts as assignee as aforesaid, and to his heirs and assigns forever.

In Testimony Whereof, I, Benjamin Harrison, President of the United States of America, have caused these Letters to be made Patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the City of Washington, the eighteenth day of February, in the year of our Lord One Thousand Eight Hundred and Ninety-two, and of the Independence of the United States the one hundred and sixteenth.

By the President:

BENJAMIN HARRISON,
D. P. ROBERTS,
[SEAL.] *Recorder of the General Land Office.*

2 x 1797.
241797.
B.
S. E. H.

Department of the Interior,
General Land Office,
Washington.

Nov. 3, 1910.

I hereby certify that the annexed copy of patent is a true and literal exemplification from the record in this office.

In Testimony Whereof, I have hereunto su-scribed my name and caused the seal of this office to be affixed, at the City of
35 Washington, on the day and year above written.

JOHN O'CONNELL,
[SEAL.] *Acting Recorder of the General Land Office.*

Endorsed: Recorded Nov. 21, 1910, in Con. Bk. 66, pg. 412. S. O. Williams, D'y Cl'k and Ex-off. D'y Recorder. Filed in evidence in Suit No. 13843, Date 11/19/10. A. S. Hardin, D'y Cl'k.

"G."

State of Louisiana,

Land Office and Commission of Forestry.

BATON ROUGE, August 3rd, 1910.

I hereby certify that the hereto attached papers are correct copies from the Records of the late United States Surveyor General's Office, La., which are now a part of the records of this office.

Witness my hand and Official Seal, this Third day of August, A. D. 1910.

FRED J. GRACE,
Register of the State Land Office.

Filed in evidence in suit 13843, 12/19/10.

36 SHREVEPORT, LA., Nov. 14/70.

To U. S. Surveyor General, New Orleans.

SIR: I am just in receipt of a letter from His Hon. J. S. Wilson, Com. Land Office, Washington, D. C., to whom I had written in relation to a certain parcel of land lying on Jims Bayou in this Parish and some 30 miles North of this place, upon which there has been a settlement for upwards of 15 years, and frequently applications have been made to enter the same at U. S. and State Land Office; and upon examining maps, find it as Lake, which debars us from entering.

I had writ-en His Hon. Mr. Wilson to order an U. S. Surveyor to come and make a survey of this land, so that I may enter it and have a clear title; and he refers me to you.

I hope, sir, that you will send a surveyor to run off this land as soon as convenient, as I have occupied it for many years; having purchased from original settler his improvement claim and still hold it.

There may be a half to a section of this land; and I suppose the Surveyor failed to cross a slough at the time; and being high water, he believed all across the slough was water or submerged land.

Be pleased, sir, to let me hear from you soon.

Very respectfully yr. obt. servt.,

STEPHEN D. PITTS.

37 Office of Surveyor General, District of Louisiana.

NEW ORLEANS, La., November 23rd, 1870.

Stephen D. Pitts, Esq., Shreveport, La.

SIR: Your letter dated 14th inst., asking for a survey of a piece of land on "Jims Bayou" is recd. All such surveys must be paid for by parties in interest. The course to pursue to have the survey made is this: You give me a pertinent description of the land you wish surveyed. I will then form an estimate of the cost of the survey, including all field and office work. Then upon a deposit made by you of the amount thus estimated in the U. S. Assistant Treasury in this City, I am permitted to contract with a deputy U. S. Surveyor to do the work.

The law prescribing this mode of doing such work was approved by the President of the U. S. May 30th, 1862. The surveyor is paid directly from Washington a specified price. Should my estimate for the work be too large, the balance will be remitted to you from Washington. It may be that there is a good surveyor in your

vicinity who can qualify and do the work without much expense. I shall be glad to accommodate you as far as the law will permit.

Respectfully yours,
(Signed) JOHN LYNCH,
Surveyor General.

38 SHREVEPORT, LA., April 13th, 1871.

John Lynch, Esq., Surveyor General, New Orleans, La.

Your favor of the 23d November, 1870, to S. D. Pitts has been handed to me with directions from him to take such steps as may be necessary to perfect his title to the place known as "Wilson Point" in Caddo Parish. I notice your instructions as to the course to be pursued to have the place surveyed.

F. P. Leavenworth, the present parish surveyor, is a very competent man, having been himself for several years a United States Surveyor, and I could easily get him to do the work, if he was authorized. His charge would be small and the amount I can arrange with my brother, R. T. Buckner of the house of Speaks and Buckner, 39 Union St., to deposit, as you direct.

I send herewith a description of the land from which you can make your estimate of the amount to be deposited.

You will greatly oblige me by an early reply as one Peter Cracker is endeavoring to enter this land, notwithstanding the fact as you will see, that Mrs. Pitts bought it with the improvements thirteen years ago, and has had undisputed possession ever since, and I am very anxious to defeat so unjust proceeding.

Very respectfully,
(Signed) RO. T. BUCKNER.

39 Recorders' Office, Caddo Parish, Record Book "L," Page 420, Feby. 21st, 1858.

Alfred Wilson
to
Ann Pitts.

"All the improvement lying on and about the following described land, to wit: The S. E. ¼ of the S. W. ¼ and the S. W. ¼ of the S. E. ¼ of Sect. No. 4, and East ½ of N. W. ¼ and West ½ of N. E. ¼ of Sect. (9) Nine, Township 20, Range 16, West of Northwestern land District of Louisiana, containing 160 acres more or less the fractional losses being considered."

Survey made by Haily Watts, then Parish Surveyor. (Please estimate.)

SHREVEPORT, LA., April 14th, 1871.

R. T. Buckner, Esq.

DEAR BRO.: Peter Crocker is making every effort to enter the Wilson place and turn Eliza and Mr. Pitts of a house and home. The land has never been surveyed by a Government Surveyor and

I have written to Mr. Lynch for an order appointing Capt. Leavenworth, a Deputy Surveyor to survey the place. The Surveyor General requires a deposit to be made in New Orleans to defray the cost. Please make the deposit for me and get the order as soon as possible. I will remit the amt. deposited as soon as advised as to the amt. Please attend to this at once as I am anxious to get ahead of Crocker.

I would not trouble you with this if I was certain Eli was in the City. Mr. Pitts has a fine crop growing on the place and has
40 a prospect of doing well if he is only qui-ted in his possession.

Yours aff.,

RO. T. BUCKNER.

SHREVEPORT, LA., May 3, 1871.

E. W. Foster, Surveyor General of La.

DEAR SIR: Your favor of Apr. 28th is at hand in reference to a survey of certain lands in T. 20, R. 16, in the Northern part of this Parish, and I fully appreciate your courtesy in referring the matter to me as the official Surveyor of this Parish. I respectfully enclose an application from my associate, Mr. B. B. Bristol, for the deputyship as it will be impossible for me to subscribe the oath required.

Mr. Bristol is a northern man, a resident of this State for over a year, and fully capable to undertake the work and carry it through in accordance with your instructions.

The work will probably require three (3) miles of ordinary (section) line and three (3) miles of traverse in the lake shore, which is worth about eight (8) dollars per mile for the field work.

It will give me pleasure to accompany Mr. Bristol during the execution of the work, and under such assistance as may facilitate the survey.

I have the honor to remain,

Very truly yr. Obdt. Servt.,

(Signed FREDERICK P. LEAVENWORTH.

41 Office of Surveyor General, District of Louisiana.

NEW ORLEANS, May 9th, 1871.

Messrs. S. D. Pitts and R. T. Buckner, Shreveport, La., Care R. T. Buckner, Esq., New Orleans.

SIRS: I am in receipt of your communications of April 13th and 14th, by the hands of R. T. Buckner, Esq., of this City and in conformity with your application I have estimated the cost of the survey of the tract of ground known as "Wilson Point," and fully described in your letter of 13th April, which estimate is as follows:

The estimated expense for office work is $25.00.

The estimated expense for field work is $75.00.

Upon the receipt of a certificate of deposits of a United States depository, showing that the required sums have been deposited with him in a proper manner to pay for the work. I will contract with Mr. Bryon, B. Bristol, a United States Deputy Surveyor, and have the survey made and returned in the same manner as other

public surveys are. I will also state in addition to what Mr. Lynch informed you, in his letter of November 23d, that the payment of the amount required for the survey will not give the depositor any priority of claim or right to purchase the land, or in any manner affect the claim or claims of any party or parties thereto and that when surveyed it will be subject to the same general laws and regulations in relation to the disposition thereof, that other public lands are.

42 Should the amount deposited exceed the cost of the survey and expenses incident thereto, the instructions provide for the repayment thereof to the depositor.

I have the honor to be

Yours most respectfully,

(Signed) E. W. FOSTER,
Surveyor General, La.

Office of Surveyor General, District of Louisiana.

NEW ORLEANS, July 1st, 1871.

Hon. Willis Drummond, Commissioner Genrl. L. O., Washington, D. C.

SIR: On the 13th day of April last, Thomas H. Pitts of Caddo Parish, La., made application for the survey of a small island which is described as follows: A small island or tract of land situated in Ferry Lake and in Town. 20 No., of Range 16 W., Northwestern Land Dist. La., which was omitted when the adjacent lands were surveyed and which is separated from the main land by a Channel 10 to 40 feet wide.

I examined the records and data in my office and became satisfied that the *island* was public lands and had never been surveyed. I therefore made an estimate of the cost of surveying it as directed in "Instructions" to Surveyors General, dated June, 1902, at the same time notifying him that the depositing of money for the survey thereof would in no manner affect the right of any parties in said lands, nor give priority of claim to the depositing.

43 In due time Mr. Pitts made the deposit according to my estimate and I herewith enclose the certificates of deposit, to wit: "No. 200," for continuing the public surveys $75.00; "No. 201," for compensation of Surveyor General and Clerks in his office, "$25.00."

I have also entered into a contract with Byron B. Bristol, U. S. Deputy Surveyor, for the survey of the tract of land as described in the application as aforesaid, and I herewith enclose the same with the bond duly executed according to law and instructions and respectfully solicit your approval of the same.

I have the honor to be, very respectfully,

Your obt. servt.,

(Signed) E. W. FOSTER,
Surveyor General, La.

Office of Surveyor General, District of Louisiana.

NEW ORLEANS, July 17th, 1871.

To the First Comptroller of the Treasury Department, Washington, D. C.

SIR: I have the honor to enclose herein the triplicate of a contract and bond made with Byron B. Bristol of Shreveport, La., for the survey of a small island or point of land in the Northwestern Dist., La.

This contract was duly approved by the Commissioner of the General Land Office July 8th, 1871, and this triplicate is transmitted to you in obedience to his letter to me dated June 6th, 1871.

Very respectfully, Your Obt. Servt.,

(Signed) E. W. FOSTER,
Surveyor General, La.

44 *Filed Notes of the Survey of Wilson's Point,*

In Secs. 3, 9, and 10 of Township No. 20 North of Range 16 West, in the Northwestern District of Louisiana, by Byron Bradley Bristol, Deputy Surveyor, under his Contract Dated 26 July, 1871.

Assistants:

Byron Bradley Bristol, Compassman.
Frederick Peabody Leavenworth, Chainman.
Edward George Washington, Chainman.
Robert Tunstall Buckner, Axman & Flagman.

Oath.

I, Byron Bradley Bristol*n* having been appointed — of the United States in Louisiana, do solemnly swear, that I will well and faithfully, and to the best of my skill and ability, execute the duties confided to me pursuant to a contract with E. W. Foster, Surveyor General of Public Lands in Louisiana, bearing date the 26th day of July, 1871, according to the laws of the United States and the instructions received from the Surveyor General.

BYRON BRADLEY BRISTOL.

Subscribed and sworn to before me this 25th day of July, 1871.

MOSES H. CROWELL,
U. S. Comm., Dist of La.

I, Frederick Peabody Leavenworth, do solemnly swear that I will faithfully execute the duties of chaincarrier; that I will
45 level the chain upon uneven ground, and plumb the tally pins, whether by sticking or dropping the same; that I will report the true distance to all notable objects, and the true lengths

of all lines that I assist in measuring to the best of my skill and ability.

FREDERICK PEABODY LEAVENWOR-H.

Subscribed and sworn to before me this 25th day of July, 1871.

MOSES H. CROWELL,
U. S. Comm., Dist of La.

I, Edward George Washington, do solemnly swear that I will faithfully execute the duties of chain carrier; that I will level the chain upon uneven ground, and plumb the tally pins, whether by sticking or dropping the same; that I will report the true distance to all notable objects, and the true length of all lines that I assist in measuring, to the best of my skill and ability.

his
EDWARD GEORGE × WASHINGTON.
mark

Subscribed and sworn to before me this 25th day of July, 1871.

MOSES H. CROWELL,
U. S. Comm., Dist of La.

I, Robert Tunstall Buckner, do solemnly swear that I will well and truly perform the duties of flagman and axman according to instructions given me, and to the best of my skill and ability.

ROBERT TUNSTALL BUCKNER.

Subscribed and sworn to before me this 25th day of July, 1871.

[SEAL.]

MOSES H. CROWELL,
U. S. Comm., Dist. of La.

46 *Field Notes of the North Boundary of Sec.* 10, *in T.* 20 *North, Range* 16 *West.*

To determine the proper adjustment of my compass for subdividing the tract called "Wilson's Point," I commence at the corner to Secs. 2 and 3, 10 and 11 of T. 20, R. 16, where I find two witness trees still standing, viz: A Post Oak, 18 in N. 7 W., 36 1 lks.

A pine 20 in dia. S. 54 W. 5 lks.

Reset a stake here, in accordance with the above named trees, and run West, along the North Bdy. of Sec. 10.

Variation 8 degrees 12′ East. 55 63 to a point in a slough bottom whence a marked.

Post Oak 18 in. dia. bears S. 33 W. 39 lks.

Locust Stump 10 in. dia. bears N. 12 W. 36 lks.

Here set a post for meander corner in accordance with the above named trees.

Sub-division commenced July 26, 1871. From the meander corner between secs. three and ten I run West along the North

Boundary of Section 10, and also on Bayou traverse, 1.50 a deep slough 75 lks. wide, runs North 24.00, set a post for corner to sections 3, 4, 9 and 10, from which

A water oak 36 in. dia. bears S. 11 E. 50 lks. Dist.
A white oak 8 in. dia. bears S. 29 W. 43 lks. Dist.
A persimmon 5 in. dia. bears N. 71 E. 40 lks. Dist.
A white oak 12 in. dia. bears N. 55½ W. 83 lks. Dist.

Land low bottom; arm of James Bayou one chain North of line.

Timber water oak, cypress West on North Boundary of Section 9 and also on Bayou traverse.

47 Variation 8 degrees 12′ East.

17.03 a cypress 12 in. dia.

18.50 a deep slough full of green cypress.

Off-set 4.00 chains South, thence West 3.50 chains to a point; thence North 4.00 chs. to a point on the East bank of the slough, and in the North Boundary line of Sec. 9.

24.50 a gum 7 in. dia. marked for a meander corner between secs. 4 and 9.

Leave bottom and enter upland here.

25.00 farm trail.

36.53 Pitts' fence.

39.50 Pitts' corn field.

40.00 set a post for Quarter sec. corner a charred stake and mound in corn field.

50.50 set a post in mound, a meander cor. on James Bayou, from which a Post Oak 8 in. dia. bears S. 41½ W. 76 lks. dist.

No other tree convenient.

Bottom land subject to yearly over-flow; upland good, Timber, oak, gum, hickory, persimmon.

Returned to cor. to secs. 2, 3, 10 and 11 previously found and ran South to ascertain the course of the East Bdy. of Section 10.

Variation 8 degrees 30′ East.

From the corner to sections 2, 3, 9 and 10 of this survey ran South.

Variations 8 degrees 30′ East.

8.00 leave overflowed bottom.

37.00 farm road.

39.30 set a post for meander corner between fractional sections 9 and 10 from which

A Black Jack 10 in. dia. bears S. 10¾ W. 17 lks. dist.

48 A Black Jack 8 in. dia. bears S. 56 W. 13 lks. dist.

Bottom land yearly inundated from 4 to 6 ft. Drift wood as far South at the 8th chain, upland, thin and poor. Timber, Black Jack, Post Oak and Hickory.

July 27th, 1871.

Meanders of the left Bank of James Bayou begin at the corner between fractional sections 9 and 4, a gum tree at 24.50 West of the corner of sections 3, 4, 9 and 10; run thence down stream in fractional sec. 4.

N. 2 degrees E. 6.00.
N. 15 degrees W. 3.00.

N. 47½ degrees E. 250.
N. 16 degrees W. 2.50.
S. 86½ degrees W. 2.50, spur of marsh extend- out North.
S. 57 degrees W. 4.50.
S. 33¼ degrees W. 4.50.
S. 63 degrees W. 4.50.
N. 81 degrees W. 2.80 at 1.10, enter Pitts' enclosure.
N. 39½ degrees W. 3.00, enter corn field.
*N. 31½ 3.50 (N. 31½ W.).
S. 84 degrees W. 6.00.
S. 13 degrees West 1.50.
N. 83 degrees W. 3.00.
S. 39 degrees W. 2.00.
S. 8 degrees E. 4.50.
S. 50 degrees E. 3.50 to the corner to fractional sect. 4 and 9, thence in sect. 9.
S. 28½ degrees E. 10.00.
S. 24 degrees W. 4.00.
South 3.00.
S. 31 degrees E. 4.00.
49 S. 51 degrees E. 11.00.
S. 65 degrees 5.00.
S. 36 degrees 4.00.
S. 3 degrees E. 5.00.
S. 11 degrees W. 3.00, Pitts' dwelling 1.50 East.
S. 24¾ degrees E. 9.00 at 4.00 cross Pitts' fence.
N. 88½ degrees E. 11.00, at 2.00 overflow at 8.50 farm road.
S. 76 degrees E. 10.00 at 7.61 Road.
N. 30 degrees E. 11.00 to the cor. to fractional secs. 9 and 10, thence in Sec. 10.
N. 30 degrees E. 9.30, at 5.29 Road.
*N. 78 degrees W. 30.00 at 17.84 Road.
N. 43 degrees W. 20.00, at 16 enter overflow on original trav.
N. 20 degrees E. 10.00 (at 2.75 cross slough), to original meander cor. to fractional secs. 3 and 10, by original official survey 56.00 chains West of corner to secs. 2, 3, 10 and 11. Land on front of Lake good, on the back slough, thin and poor. Timber, Oak, Hickory, Elm; much undergrowth.
July 27th, 1871.

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*Should be N. 78 E.

General Description.

The front land on James' Bayou is above the common average. The back land is thin and poor, post oak, flat. James' Bayou is navigable in ordinary seasons for large boats. The slough or water course near the original transverse in front of Sec. 10, is now dry and can only be traced by the rotten drift wood.

50 *List of Names.*

A list of the names of the individuals employed to assist in running, measuring, or marking the lines and corners described in the foregoing field notes of Wilson's Point in Township 20, North of Range 16 West, Northwestern Dist. of Louisiana, showing the respective capacities in which they acted.

Frederick P. Leavenworth, Chainman
Edward G. Washington, Chainman
Robert T. Buckner, Ax and Flagman.

We hereby certify that we assisted Byron Bradley Bristol, Deputy Surveyor, in surveying Wilson's Point in T. No. 20, of R. 16, and that said subdivision has been in all respect, to the best of our knowledge and belief, well and faithfully surveyed, and the boundary monuments planted according to the instructions furnished by the Surveyor General.

FREDERICK PEABODY LEAVENWORTH,
Chainman.

his
EDWARD GEORGE × WASHINGTON,
mark
Chainman.

ROBERT TUNSTALL BUCKNER.

Subscribed and sworn to by the above named persons before me, a Justice of the Peace for the Parish of Caddo, in the State of Louisiana, this 29th day of July, 1871.

MOSES H. CROWELL,
U. S. Comm. Dist. of La.

I, Byron Bradley Bristol, deputy surveyor, do solemnly swear that in pursuance of a contract entered into with E. W.
51 Foster, Surveyor General of the Public Lands of the United States, in the State of Louisiana, bearing date June 26th, 1871, and in strict conformity to the laws of the United States, and the instructions furnished by the said Surveyor General, I have faithfully surveyed the subdivision of "Wilson Point" in T. 20, of R. 16 W. Northwestern District of Louisiana, and do further solemnly swear that the foregoing are the true and orig-nal field notes of such survey.

BYRON BRADLEY BRISTOL.

Subscribed by said Byron Bradley Bristol, deputy surveyor, and sworn to before me, on this 29th day of July, 1871.

[SEAL.] MOSES H. CROWELL,
U. S. Comm. Dist. of La.

Office of Surveyor General, District of Louisiana.

NEW ORLEANS, 18th August, 1871

The foregoing field notes of the survey of Wilson's Point in T. 20, N. R. 16 W., Northwestern Dist. La., surveyed by B. B. Bristol,

U. S. Depty. Sur., have been examined, found correct and are hereby approved.

(Signed) E. W. FOSTER,
Surveyor General, La.

Surveyor's General's Office, District of Louisiana.

NEW ORLEANS, August 19th, 1871.

Hon. Willis Drummond, Commissioner Genl. L. O., Washington, D. C.

SIR: I have the honor to enclose herewith, 1st, The duplicate diagram which represents the survey of the island or tract
52 of land known as "Wilson's Point" as surveyed by Byron Bradley Bristol, D. S., under contract dated June 26th, 1871.

2d. A transcript of the original approved field notes of the same.

3d. A list of approved swamp selections, same.

4th. The account of deputy surveyor, to be paid from a special deposit of $75, made by Thos. Pitts, $40.85.

5th. The account of Thos. H. Pitts for balance due from the special deposit of $75, $34.15.

Very respectfully yours,

(Signed) E. W. FOSTER,
Surveyor General, La.

Office of Surveyor General, District of Louisiana.

NEW ORLEANS, August 19th, 1871.

H. C. Myers, Esq., Regr. U. S. Land Office, Natchitoches, La.

DEAR SIR: Herewith I have the honor to enclose the triplicate diagram and a transcript of the field notes of the survey of the tract of land in T. 20, N., R. 16 W. Northwestern land district, known as "Wilson's Point."

This survey was made by B. B. Bristol, D. S., under contract dated June 29th, 1871, and the account is made for $40.85 against a special deposit made by Thos. H. Pitts, the settler, who petitioned and prays for the survey. Please acknowledge receipt.

Very respectfully,
Your Obt. Servt.,

(Signed) E. W. FOSTER,
Surveyor General, La.

53 Office of Surveyor General, District of Louisiana.

NEW ORLEANS, August 19th, 1871.

Byron B. Bristol, Esq., Deputy Surveyor.

DEAR SIR: Your letter dated July 29th, together with the field notes and plat of your survey of "Wilson's Point," came to hand the 16th inst.

I am happy to state that your work seems to conform exactly with the previous U. S. Surveyor, and your Field Notes are full and explicit, more so than those of many of our best Surveyors. The office work is nearly completed, the survey and map was approved on the 18th inst., and I have delivered a copy of map to Mr. Buckner to send to Shreveport; the swamp selections are N. E. ¼ N. E. ¼ Sec. 9—40 acres.

Lot 1, Sec. 10—48.00 (N. W.).

The balance will be U. S. land and subject to Homestead entry at the Land Office at Natchitoches.

Your account will be forwarded to-day to the department for adjustment, it amounts to $40.85, and the amount to be refunded will be $34.15.

I will ask that both drafts be forwarded to this office for delivery and will transmit them directly to yourself, care Capt. Leavenworth, and to Mt. Pitts, in care of Mr. Buckner, if not advised to the contrary.

Please show this letter to Mr. R. P. Buckner.

I have the honor to be

Very respectfully yours,

(Signed) E. W. FOSTER,
Surveyor General, La.

54 Office of Surveyor General, District of Louisiana.

NEW ORLEANS, Sept. 26th, 1871.

R. P. Buckner, Esq., Shreveport, La.

DEAR SIR: Your letter dated Sept. 15th, 1871, was handed me yesterday, I having returned form a journey north, and in answer to your question I beg leave to state the account of Mr. B. B. Bristol amounted to $40.85, and the balance to be refunded to Mr. Pitts is $34.15, both accounts were transmitted to the General Land Office for authentication and payment on the 19th of August, the drafts to be sent in care of this office. As yet no information has been received by this office from there. You will be promptly notified when we hear from it.

Very truly yours,

(Signed) E. W. FOSTER,
Surveyor General, La.

55 "E."

T. J. D.

H. N. V.
D. E. H.
R.

Department of the Interior,
General Land Office.

WASHINGTON, D. C., October 3d, 1871.

E. W. Foster, Esq., U. S. Sur. General, New Orleans, La.

SIR: The accounts of B. B. Bristol and Thos. H. Pitts received with your letter of the 19th August, were forwarded to the Treasury

for payment on the 13th ulto., with request that drafts be sent to payees as directed.

An error of 20 chains was found in the account of Mr. Bristol, reducing the amount of the same from $40.85 to $38.85/100.

Very respectfully,

(Signed) WILLIS DRUMMOND,
Commissioner.

56 *Minutes of the Court.*

STATE OF LOUISIANA,
Parish of Caddo:

Be it Remembered that the regular term of the First District Court of Louisiana, in and for the Parish of Caddo was begun and held at the Court House in the City of Shreveport, La., in said Parish, on Monday, October 5th, 1909, it being the First Monday in said Month, when the following orders were made and proceedings, had, to wit:

Present:

Their Honors, Judges T. F. Bell and A. J. Murff presiding; J. P. Flournoy, Sheriff, and F. A. Leonard, Clerk.

No. 13843.

PRODUCERS OIL CO.
v.
L. HANSZEN et al.

SHREVEPORT, LA., Saturday, July 2nd, 1910.

Court met pursuant to adjournment.
His Honor T. F. Bell, Judge, presiding.
The Minutes of Thursday were read and approved in open Court.
Motion to dissolve filed.

No. 13843.

PRODUCERS OIL CO.
v.
L. HANSZEN et al.

SHREVEPORT, LA., Saturday, October 1st, 1910.

Court met pursuant to adjournment.
Their Honors, Judges Bell and Murff presiding.
The Minutes of Sept. 22nd were read and approved in open Court.
Prayer for Oyer filed.

57 No. 13843.

PRODUCERS OIL CO.
v.
L. HANSZEN et al.

SHREVEPORT, LA., Saturday, November 19th, 1910.

Court met pursuant to adjournment.
Their Honors, Judges Bell and Murff presiding.
The Minutes of yesterday were read and approved in open Court.
Answer to Prayer for Oyer filed.
The official plat of survey made by B. B. Bristol, U. S. Deputy Surveyor, on file in Clerk's Office, filed as Map called for, and filed in Answer to said Prayer for Oyer, with leave to substitute certified copy of said Map. Rule discharged.

No. 13843.

PRODUCERS OIL CO.
v.
L. HANSZEN et al.

SHREVEPORT, LA., Saturday, November 26th, 1910.

Court met pursuant to adjournment.
Their Honors, Judges Bell and Murff presiding.
The Minutes of yesterday were read and approved in open Court.
Answer filed.

No. 13843.

PRODUCERS OIL CO.
v.
L. HANSZEN et al.

SHREVEPORT, LA., Monday, December 19th, 1910.

Court met pursuant to adjournment.
His Honor T. F. Bell, Judge, presiding.
The Minutes of Saturday were read and approved in open Court.
Evidence partly adduced and continued for further evidence.

SHREVEPORT, LA., Tuesday, December 20th, 1910.

Court met pursuant to adjournment.
His Honor T. F. Bell, Judge, presiding.

No. 13843.

PRODUCERS OIL CO.
V.
L. HANSZEN et al.

58 The Minutes of yesterday were read and approved in open Court.
Evidence concluded and continued for argument.

No. 13843.

PRODUCERS OIL CO.
V.
L. HANSZEN et al.

SHREVEPORT, LA., Monday, January 23rd, 1911.

Court met pursuant to adjournment.
Their Honors Judges Bell and Sutherlin presiding.
The Minutes of Saturday were read and approved in open Court.
His Honor T. F. Bell, Judge, presiding. Argued and taken under advisement.

No. 13843.

PRODUCERS OIL CO.
V.
L. HANSZEN et al.

SHREVEPORT, LA., Saturday, February 25th, 1911.

Court met pursuant to adjournment.
Their Honors Judges Bell and Sutherlin presiding.
The Minutes of Monday were read and approved in open Court.
Judgment for Plaintiff.

No. 13843.

PRODUCERS OIL CO.
V.
L. HANSZEN et al.

SHREVEPORT, LA., Wednesday, March 1st, 1911.

Court met pursuant to adjournment.
Their Honors Judges Bell and Sutherlin presiding.
The Minutes of yesterday were read and approved in open Court.
Motion for New Trial filed.

59 No. 13843.

PRODUCERS OIL CO.
v.
L. HANSZEN et al.

SHREVEPORT, LA., Monday, March 6th, 1911.

Court met pursuant to adjournment.
Their Honors Judges Bell and Sutherlin presiding.
The Minutes of Saturday were read and approved in open Court.
Before His Honor Judge Bell:
Motion for New Trial overruled.

No. 13843.

PRODUCERS OIL CO.
v.
L. HANSZEN et al.

SHREVEPOORT, LA., Wednesday, March 8th, 1911.

Court met pursuant to adjournment.
Their Honors Judges Bell and Sutherlin presiding.
The Minutes of yesterday were read and approved in open Court.
Motion for Appeal filed, and Appeal, granted, returnable to the Honorable Supreme Court of Louisiana, 2nd Monday in April, 1911. Suspensive Bond fixed at $500.00, and Devolutive Bond same amount.

60 *Clerk's Certificate.*

STATE OF LOUISIANA,
Parish of Caddo:

I hereby certify that the above and foregoing pages from 1 to 64, inclusive, contain, with the originals and Stenographer's evidence attached, together with the various exhibits contained in Sections No. 2 and No. 3 hereof, a true, complete and correct copy of all papers filed, orders made and proceedings had in case No. 13843 on the Docket of the First District Court of Louisiana, wherein The Producers Oil Company is Plaintiff, and L. Hanzsen et al. Defendants.

Given under my hand and seal of office this 7th day of March, A. D 1911.

(Signed.) W. M. LEVY,
[SEAL.] *D'y Clerk First District Court of Louisiana.*

61 District Court, Caddo Parish, Louisiana.

No. 13843.

PRODUCERS OIL COMPANY
vs.
L. HANSZEN et als.

Evidence taken on trial of the above numbered and entitled cause, on trial before the Honorable T. F. Bell, Judge of Section "A," First Judicial District Court of Louisiana, in and for Caddo Parish on December 19th, 1910.

Evidence reported by R. B. Cook, Stenographer.

Appearances:

F. J. Looney, Attorney for Plaintiff.
Thigpen & Herold, Attorneys for Defendants.

Plaintiff's Evidence.

Counsel for Plaintiff offered in evidence act of sale from J. S. Noel to the Producers Oil Company, as recorded in Conveyance Book No. 63, page 394, with leave to substitute a certified copy thereof.

To be filed in evidence and marked Exhibit "A."

Counsel for Plaintiff offered in evidence deed from — Wulsch to J. S. Noel, as recorded in Conveyance Book "Y," page 501 of the records of Caddo Parish, Louisiana, with leave to substitute a certified copy thereof.

To be filed in evidence and marked Exhibit "B."

62 Counsel for Plaintiff offered in evidence act of sale from — Pitts to — Wulsch, as recorded in Conveyance Book No. 2, page 115, of the records of Caddo Parish, with leave to substitute a certified copy thereof.

To be filed in evidence and marked Exhibit "C."

Counsel for Plaintiff offered in evidence Patent from the United States Government, a certified copy, to Thomas H. Pitts of the Northwest quarter of the Northeast quarter of Section Nine, Township Twenty, North of Range Sixteen west.

Filed in evidence and marked Exhibit "D."

Counsel for Plaintiff offered in evidence a certified copy of the patent from the United States Government to Thomas H. Pitts, to Lots One and Two of Section Four, and other lands.

Filed in evidence and marked Exhibit "E."

Counsel for Plaintiff offered in evidence certified copy of the plat of the Bristol Survey, and four other surveys of Township Twenty, Range Sixteen west, certified to by Fred J. Grace, Register, dated December 3rd, 1910.

Filed in evidence and marked Exhibits "F, 1, 2, 3, 4, 5."

Counsel for Plaintiff offered in evidence the field notes and procesverbal of the Bristol survey and other documents attached,

relative to the survey of what is known as Wilson's Point, certified to Aug. 3rd, 1910, by Fred J. Grace, Register, pages one to 20, inclusive.

Filed in evidence and marked Exhibit "G."

It is admitted by both parties that J. S. Noel was in possession, as owner, from the date of his purchase in 1880, to the sale to the plaintiffs of the property known as the Wilson's Point place, his
63 corporeal possession being limited on the East and North by the Bristol meander line, and said Noel never exercised any acts of corporal possession, or was ever in occupancy of any land in Section Four, East of or outside of the said meander line, or of any of the land in controversy. This is not intended to apply to any other land West of the land in controversy. That Noel's possession was vested by act of purchase and continued by occupancy in the Plaintiffs.

It is further admitted that defendants on the second day of April, 1910, took actual possession of, and posted and filed notices of location under the placer mining laws of the United States, of the tract of land on which they are now in possession, and concerning which this suit is brought, which tract of land is described by metes and bounds in defendant's answer.

It is further admitted that when defendants took possession of said land, they located the western boundary line of their location, as the Bristol meander line, as properly located, and the defendant does not claim the ownership or possession of any land west of the true location of said Bristol meander line.

It is admitted that since the institution of this suit that the defendants have actually discovered oil and gas and are now producing oil from said property.

It is admitted by both parties, that the land in controversy is high land and was high land, at the date that Bristol made his survey in 1871.

There being a dispute between the Plaintiff and Defendants as to the true location of the Bristol meander line referred to above, it is agreed that the said issue as to the true and exact location of said line is not to be passed upon in this case, said issue being relegated to a subsequent proceeding herein, should the
64 Court sustain the defendant's position that said line is the true boundary between the property, and the question of costs and damages are likewise relegated to further proceedings.

Counsel for Plaintiff offered in evidence the affidavit, bond, order for writ, writ of sequestration and the Sheriff's return thereon, motion to bond, order to bond, and bond of the sequestration.

Filed in evidence and marked Exhibits Nos. —.

Testimony of T. B. Hoffer.

T. B. HOFFER, witness for plaintiff, being first duly sworn, testified as follows:

On direct examination he said:

Q. Mr. Hoffer, what is your profession?
A. Civil Engineer.
Q. Are you a registered Civil Engineer, in the State of Louisiana?
A. Yes, sir.
Q. Mr. Hoffer, did you ever make a survey of the land known as the Wilson Point place?
A. Yes, sir; I made a survey of it.
Q. Have you made more than one survey of it, in company with anyone else?
A. I made a survey complete with Mr. J. M. Williams, and have made several surveys myself.
Q. Which Mr. Williams?
A. J. M. Williams, the surveyor.
65 Q. The survey made by Mr. Williams, did you have anything to do with platting or mapping that survey?
A. Yes, sir; I did the work for him, after he made the survey, I copied a portion of it, and went and surveyed and completed it, and when he came in with the notes he read the notes to me and I made it up for him.
Q. Since this survey was made by Mr. Williams, he has died?
A. Yes, sir.
Q. Have you had any occasion to look among his papers, since his death?
A. No, sir.
Q. The data that he gave to you to make this survey, he read that to you, or called it out to you?
A. He did not leave it with me, but at the time I was with him his corners were such that his survey was absolutely correct.
Q. The data and memorandum he made?
A. Only in the form of the map.
Q. He afterwards saw that map himself?
A. Yes, sir; he saw the map himself?
Q. Mr. Hoffer, did you map the property according to the calls made by Capt. Williams?
A. Yes, sir.
Q. Have you ever been over the ground since the survey was made?
A. Yes, sir; I have been over the complete survey as made by him.
Q. Did you make a resurvey of the water line, as made by him?
A. Yes, sir; in following out the line he ran for the water line. I took his courses and check over them, going practically over the line he run.
66 Q. Did you then make another map, or adopt the map previously made?

A. I adopted the map previously made with him.

(Shows witness map.)

Q. Examine that map and see if that is the map you refer to?
A. Yes, sir. That is the copy of the original, taken from the tracing of the original map.
Q. Why have you not got that original map, the tracing?
A. It is not necessary, I did not think.
Q. Have you got it?
A. Yes, sir; we have it, that is a blue print.
Q. This is made from the original map itself?
A. Yes, sir.

Counsel for plaintiff offers map referred to in evidence.
Filed in evidence and marked Exhibit "H."

Q. Mr. Hoffer, do you remember the date when you first ran those lines with Mr. Williams?
A. Not positively, it was, I think, the latter part of May or the first of June.
Q. Have you any memorandum or anything that you can get that date, with exactness, the time that you ran the line with him?
A. I do not know that I can distinguish it from the rest of my time. My time goes in as work for so many hours a day; I do not know whether I could distinguish any certain day or not.
Q. Mr. Hoffer, at the time that you made this survey, had Mr. Barnes already made the location on which the fence was built by these defendants?
A. Yes, sir.
67 Q. Did you see his fence at the time that you made this survey?
A. Yes, sir.
Q. Was that fence entirely on dry land then?
A. Part of it was on dry land.
Q. Well, was the fence from the upper portion of the long point of land, near the point, that is shown on this map, as the North end of contour, marked as 102 and letter "A," was that on dry land, or was it running through the water towards the point marked letter "B?"
A. That line was across water and I would judge that it was anywhere from two to three and a half feet deep.
Q. Have you ran that line lately, the original water line?
A. Yes, sir.
Q. Have you retraced it lately, you and Moore retraced it?
A. Yes, sir.
Q. What time was it when you all retraced it?
A. We did it last week, or about two weeks ago.
Q. About two weeks ago?
A. Yes, sir; about that.
Q. You were not with Mr. Moore when he made the contour, or lake elevation?
A. No, sir.

Q. Mr. Hoffer, at the time that you retraced these water lines, was the line of fence from "A" to "B" on high dry land?

A. No, sir; it was not on high dry land.

Q. Was it in the water.

A. I do not think it was, but there might have been some water over it.

68 Q. Any evidence that it was over the posts?

A. No, sir; not over the posts, but the water had fallen considerable, but we would strike water through there, struck the water going up the line and the water had fallen two or three feet.

Q. What is the growth through that place?

A. It is mostly cypress and willow.

Q. Did you notice any willows where the fence was?

A. Yes, sir; as well as cypress.

Q. Through there where this fence was?

A. Yes, sir.

Q. How much willow?

A. Did not notice any amount of it, a very thick mass, and a lot of scrub cypress, lot of vines and bamboo, cannot see through, it looks like a swamp overflowed land.

Q. Is not this line that you ran through there, the fence line, are there any indications of trees to show the ordinary stage of high water, as much above this fence line as ran by Barnes?

A. The indications would go to show the water line would be much farther back than those trees.

Q. The trees in this low land there, the water line that you ran shows the water marks as much higher than that?

A. Yes, sir.

Q. How much farther back would you say, from the growth of the grass and marks on the trees, that the water does come long enough to make the marks upon the vegetation? How much farther back from the water line that you ran?

A. It will vary from ten to thirty feet.

Q. Farther back than this line?

A. Yes, sir.

69 Q. Is there any growth of high land timber, at all below the line that you say is ten to thirty feet behind your water line?

A. The line as run by Capt. Williams and checked by me, practically skirts the edge, for two-thirds of the length of it, between the high land timber and the low land.

Q. Mr. Hoffer, a while ago I asked you if you had noticed the line as marked from "A" to "B" on the map?

A. Yes, sir.

Q. You made a statement that there were willows along that line, is that statement correct?

A. No, sir; that is not correct, I was confused in the line that you had reference to.

Q. You did not have the map before you at the time?

A. No, sir; and you designated the line.

Q. Are there any willows out that far?

A. No, sir; no willows out there at all.

Q. Do you know whether there is out there, and back from there towards Williams' line and the line you ran as the water line, there is any indications in the way of grass to show that the soil is different from the soil further back?

A. Yes, sir; there are indications to show that this bottom or so-called arm of the lake extends that far back and still farther back.

Q. That the water is on there long enough to make an impression on the vegetation?

A. Yes, sir.

Q. Do you know whether that condition exists even further back than the Williams' line?

A. Yes, sir; farther back than where he crossed there.

70 Q. When you were running this line down there, from the Northern boundary line of Sections Nine and Four, you ran North along—you ran the dividing line at one time, or did you, from this point on the map marked "C?" Did you run that line up North?

A. Yes, sir; ran North clear on through.

Q. When did you run that line?

A. That was at the time that Williams was making the survey around that country.

Q. Did you notice any water conditions at that time, and if so where, and mark it "D" to "E," where you noticed the water, and state what you did when you got there?

A. I ran up to point "D" and hit the water there and it must have been twenty inches deep; I did not go through it, I off-set three or four chains, then went down parallel with the time and came back to the line on the other side at point marked "E," then continued through until I hit the main body of the lake above there.

Q. Now at the present time, the water is not anything like as high as it was at that time?

A. No, sir; it is considerable lower.

Q. Will this line on the map there in black, marked water line, December 16th, 1910, show the line in the condition as it exists to-day?

A. Yes, sir.

Q. Is the water very low now?

A. I think that it is between four and five feet below the average stage of the water.

Q. Is it quite low?

A. Yes, sir; lower than it has been known to be for some time.

Q. That is simply from hearsay, you do not know that

71 as a fact?

A. No, sir; I do not know that as a fact.

On cross-examination he said:

Q. Mr. Hoffer, did you run these lines originally with Mr. Williams?

A. Yes, sir.
Q. On what date?
A. As I stated before, I do not remember the date, but it was along in May or the early part of June, about that time.
Q. Of this year?
A. Yes, sir.
Q. What lines did you and Williams run?
A. The line there with the courses marked on it, and I supposed to be, from the conditions existing there the average water line.
Q. You only ran the line, this particular line, the line that parallels the other line?
A. Not in company with Mr. Williams.
Q. How long did it take you all to run it?
A. I believe that we were out there about two days.
Q. Took two days to run the lines of Section Four?
A. Another section in there.
Q. Three and Four?
A. Yes, sir.
Q. To the North line of Section Four?
A. Yes, sir.
Q. You ran lots one and two, known as this mineral claim?
72 A. I was not with him when he traversed the line shown as the United States traverse, I was only with him around the water line.
Q. You only ran around what is called the edge of the water of Jeems Bayou?
A. Yes, sir.
Q. That took about two days?
A. Yes, sir.
Q. Have you ever ran the Barnes line?
A. No, sir.
Q. Is it not a fact that the red line that you have indicated as the Barnes line, was platted from the field notes?
A. Yes, sir; from Mr. Barnes' notes as taken from the record.
Q. Not run?
A. No, sir; but I will state that the red line- were tied into that corner.
Q. Is it not a fact that the only two lines tied together, is the Southwest corner established by Barnes, and the Southwest corner run by Williams and you?
A. Yes, sir.
Q. Then you simply platted it from Barnes' field notes?
A. Yes, sir.
Q. Mr. Hoffer, you know where Cotton shed arm is?
A. Only from what people say. They say that that is Cotton shed arm, that I have marked there.
Q. The one that shows this survey on the East?
A. Yes, sir.
Q. Is it not a fact that this indentation marked branch of Cotton shed arm, crosses that peninsular very much farther than
73 you have it on the map, as a depression?
A. Yes, sir; considerable farther than shown there.

Q. The water drains from the hills down into there?
A. Yes, sir.
Q. Don't you find on Ferry Lake and Jeems Bayou that there are a great many places that drain into the lake, similar to this?
A. Yes, sir.
Q. One just above the Ananias Club house?
A. Yes, sir; there is a small one there.
Q. Sloughs that run into the lake, low depressions?
A. Yes, sir.
Q. Have you been up that line recently?
A. Yes, sir; there recently.
Q. There is no water in that slough, that extends farther down south across the peninsula?
A. No, sir; not back that far. Don't extend out that far.
Q. You see the present water line?
A. Yes, sir.
Q. Now Mr. Hoffer, in order to put water up into that slough, as far as the quarter section line, does it not take pretty high stage of water?
A. No, sir; not necessarily.
Q. How do you know that?
A. I only know from the conditions that have existed there since I have been here.
Q. Have you yourself ran the contour of that lake?
A. Yes, sir; and I know where the water stood when I was there.
74 Q. In period of high water, don't the lake back up into all of these sloughs?
A. I do not know in regard to the sloughs, but here it does.
Q. Don't it back up into the slough above the club house?
A. Yes, sir.
Q. Can you not recall other sloughs where the hill water drains into the lake and in high water the lake backs up into them?
A. No, sir, I do not.
Q. All of these sloughs are low depressions?
A. Yes, sir.
Q. And when they get to the lake there is a mouth, where it empty-s into the lake, you do not find any falls or cataracts?
A. No, sir.
Q. The slope is gradual towards the lake?
A. Yes, sir, in some portions. You take that slough there as it extends back, and in average stage of water it is on the same level with the lake for quite a way.
Q. It gets very narrow as it extends west?
A. No, sir, pretty wide, quite a bit of water there.
Q. That is what you call a slough?
A. No, sir, I would call it more of an arm of the lake, if you strike there in an average stage of water, you have to wade through eighteen to twenty-two inches of water, you would not call that a slough, where the water stands all the time, comes directly from the lake, you would call that an arm of the lake.

Q. In ordinary stages of water, don't the slough carry the water from the hills to the lake?

75 A. Yes, sir, from rains, but in ordinary stage of water the water stands in there back beyond that section line.

Q. How far?

A. Nearly to that section line running East and West?

Q. Nearly to the quarter section line?

A. The section line running East and West.

Q. Where "C" is marked?

A. Yes, sir.

Q. Is not that the same slough that Bristol speaks of, as the green cypress?

A. Yes, sir, he strikes that.

Q. He calls it a slough with green cypress in it?

A. I do not know what he calls it, I know I had to go around it.

Q. What kind of cypress there?

A. Very small scrub cypress.

Q. Not the cypress with the big roots?

A. No, sir, did not see any of them in there at all.

Q. Small green cypress?

A. Yes, sir, probably an inch thick.

Q. You did not find any big cypress in there?

A. No, sir.

Q. Mr. Hoffer, when you get out into the Cotton Shed Arm, east of the mineral filing in controversy, what is beyond what you designate on your map, as water line December 16th, 1910, do you find big cypress out there?

A. You go from the small cypress into the scattering big cypress.

Q. You still find big cypress out to the North of where Williams designates as open lake?

A. I would not testify as to that. I do not know whether there are any in there or not.

76 Q. Don't you know that the southern portion of this arm is filled with big cypress?

A. No, sir, however I know there are small cypress there.

Q. You would not swear either way?

A. I would swear that there were small cypress there, running out as far as you can see.

Q. You would not swear positive- there were not big cypress there?

A. No, sir, I would not make a statement in regard to big cypress.

Q. Now when you get out into Jeems Bayou proper, there are no live cypress there?

A. No, sir, dead stumps.

Q. Dead stumps?

A. Yes, sir.

Q. Now what is designated as open lake, are there any live cypress in that?

A. May have a little in there.

Q. How many?

A. Not a great many. I think you will find more stumps than any thing else.

Q. You find stumps?

A. Yes, sir, all over the lake.

Q. You find stumps, in what is designated as open lake, in the northern part of Cotton Shed Arm, near the Pure Oil Company's well?

A. I have not been over that, in a boat and would not say for sure whether any stumps in there or not.

Q. Now take your map (Handing witness exhibit "H"). Now say North of this point marked "A" on your map, don't you know that this water is full of live cypress trees, large trees?

A. I do not know whether it is or not.

77 Q. South of that point, is it not full of cypress trees?

A. I do not know whether it is full of large cypress or not.

Q. You know that this slough is full of small cypress?

A. Yes, sir.

Q. Mr. Hoffer, about how much meander line can a surveyor run in a day with two chainmen and axman?

A. Some of them can run three or four miles.

Q. How much could he run where the line was filled with a thick underbrush, in the middle of the summer, with only two chainmen and an axman?

A. Not very much.

Q. A mile a day?

A. Yes, sir, something over a mile.

Q. That is about as much as he could survey?

A. Different surveyors have different luck. You take Mr. Williams in running he was very accurate and takes plenty of time and ran three miles in two or three days, and some other man would take twice as long as we did.

Q. You all took three days in running the water line?

A. About two days. I think that we went out there one morning and got around there the next afternoon about four o'clock.

Q. In the middle of the summer ran that much?

A. Yes, sir, more than that, two miles is very small amount.

Q. Through the underbrush?

A. Have a good axman, have to take your time.

Q. Would not a mile a day through the underbrush be a pretty good day's work?

A. Yes, sir, ought to make a mile and a quarter.

78 Q. A man going further than that, could he be accurate?

A. Depend upon the axman he had.

Q. You know what that country is up there in the summer time, full of briers and underbrush?

A. Yes, sir.

Q. Could a surveyor with one axman survey more than a mile or a mile and a quarter a day?

A. I do not see why he could not.

Q. When not blazed out?

A. Yes, sir, when it is not blazed out.

Q. He ought to do that much in a day, a mile or a mile and a quarter?

A. Yes, sir.

Q. Could he do much more with any degree of accuracy?

A. I believe that I could make two miles a day there with just as much accuracy as anyone.

Q. In the summer time?

A. Yes, sir.

Q. Through the briers?

A. Yes, sir. It don't make any difference how the weather is, whether it is hot or cold, depends upon how you manage the men.

Q. It took you all three days to run the line?

A. About two days.

Q. How many miles is that?

A. I do not know. There is a whole lot of that country that we crossed that is not in that timber.

Q. Did you check the plat yourself with William's field notes?

A. Williams called the field notes and I platted them.

Q. You are positive that you did not drop any of the calls?

79 A. Yes, sir, very pos-tive, the survey closed. I platted it out and Williams was there with me and verified the correctness of it.

Q. Mr. Hoffer, you know Mr. Chalk?

A. Yes, sir.

Q. What is his occupation?

A. Engineer for the Gulf people.

Q. He don't practice engineering generally?

A. He works for them.

Q. Only for the Gulf Company.

A. Yes, sir, as an engineer.

Q. What is his reputation as an engineer?

A. Good. I never heard anything against it.

Q. Did you ever run the shore lines?

A. No, sir.

Q. You know the contour?

A. Yes, sir.

Q. Examine this plat——

Objected to by Counsel for plaintiff on the grounds and for the reason—

1st. That he is not a registered engineer and his work is not admissible under the laws of Louisiana.

2nd. As irrelevant.

3rd. This is an attempt to collaterally attack a survey made by a United States surveyor.

By the COURT: Admitted subject to the objection.

To which ruling of the Court, Counsel for Plaintiff excepts and asks that this note stand in lieu of formal bill of exceptions.

80 Q. Examine that map, and state whether the red line on that, is about the shore line of Sections Nine, Ten, Fifteen and Sixteen?

A. The only thing that I can tell about this is, I have never been over this ground, but one of the engineers working for me surveyed along there and it platted up something like this, but his survey don't come out as far in Sections Fifteen and Sixteen as you show here. It was something like that. I do not say this is incorrect or not. I have not been over that ground.

Testimony of G. H. Moore.

G. H. MOORE, witness for Plaintiff, being first duly sworn, testified as follows:

On direct examination he said:

Q. Mr. Moore, the map filed in evidence in connection with the testimony of Mr. Hoffer, has contour lines on it?

A. Yes, sir.

Q. I want you to explain why you put them there and what they represent?

A. They represent this. I assumed the top of the water as an elevation of one hundred. Assuming that to start from, then at these different stations marked on the traverse line I set up the level and took the readings, and marked it as two feet higher or lower or whatever it was, this shows the elevation above the present water level.

81 Q. Here on this line is 102, what does that mean?

A. That means that the ground along that line there is two feet higher than the present water line of the lake.

Q. The present water level, have you also shown that on the map?

A. No, sir, shows the edge of the present water line.

Q. That is represented as one hundred?

A. Yes, sir, represents the elevation as one hundred.

Q. That was made by you December 16th?

A. It was made on December 14th, I have it marked the 16th but that is an error, it was made December 14th and marked December 16th, I looked yesterday afternoon and it was December 14th.

Q. Was that taken when the water was very low?

A I never was up here before this year.

Q. Is it very low, as compared to what you have seen water there this year?

A. Yes, sir, extremely low.

Q. Would the water line, ordinarily be much above that?

A. The water line, ordinary high water line, when I was there in May, the first of May, this line represented by Williams' survey would represent accurately the line of the water at that time.

Q. Is there any indications, back behind that line, further up on the land?

A. There is a difference in the vegetation, I would say on an average of fifty feet back of the line run by Williams, there is grass growing there, that you never see except on land that is

covered with water for a considerable time, on an average of fifty feet away from the lake, that grass is there.

82 Q. Will that occur on his entire traverse line?

A. With the exception of a few points, for instance one right here (Witness marks "F" on map, at point indicated, at a point above his line, but that is just a sort of a hogback that runs over there.

Q. Mr. Moore, look at the map, and see, look at the point designated by the letter "G," what is the condition at that point?

A. That is less than two feet higher than the present water line.

Q. Did you take the elevation of that?

A. Yes, sir.

Q. What was it?

A. I do not remember what it was, I have it down, the contour line represents 102, but it shows less than 102.

Q. Did you take the elevation on a stake near to that stake?

A. No, I did not take the elevation on a stake near to that stake.

Q. You call it stations?

A. Yes, sir, took all of them.

Q. You took the elevation at the point marked "H"?

A. Yes, sir, I took one at "H."

Q. What did that show?

A. 103 4-100 3.4 higher than the water level.

Q. Would you say that the line, as shown as the water line there is a true delineation of the water line on the arm of Jeems Bayou?

A. Yes, sir, I certainly would.

Q. As a matter of fact, even behind the grass, are there not indications in the growth, vegetation that only grows in the water?

83 A. There is no indication back there that indicates any continuous water.

Q. Is there any defined line of growth of the trees?

A. Yes, sir, scrub cypress back of that line of grass for forty or fifty feet all the way around. There is a lot of scrub cypress, in some places even further back, in some places it goes one hundred and fifty feet. All the way around that traverse there is scrub cypress back of the grass. The line is well defined where the scrub cypress leaves off and the big timber commences, see it easy.

Q. That is where the open timber begins and the scrub cypress leaves off, which is one hundred feet back of Williams' line?

—. —.

Q. Did you notice the marks on the trees out in the lake, the water marks?

A. There is a line you can see looking out in the open water, you can see marks, evidently put there by something, and I have noticed in other places the marks of water and these marks are similar in character to other water marks that I have noticed on trees.

Q. Did you run the elevation of that?

A. Yes, sir, I turned the instrument on them and it hit the ground about where that scrub cypress ends.

Q. Mr. Moore, is there any high land growth between the line

you say is the clearly defined land, out towards the water, any trees that grow on high land?

A. No, sir.

Q. Mr. Moore, you will notice, looking on this map marked exhibit "H" from the points "A" to "B," which is supposed to designate the Barnes fence,—did you notice the actual fence in the ground?

A. Yes, sir.

Q. When did you first see that fence?

A. About two weeks ago.

84 Q. You first saw it two weeks ago?

A. Yes, sir, the first time I ever noticed it. I do not recall noticing it until then.

Q. When that line was run was it in water?

A. No sir, that is in the water part of it.

Q. Part of it is in the water now, even in low stage of the water?

A. Yes, sir.

Q. The water at the average stage of the water, shown by Mr. Williams, would this fence be in the water considerable from these two points, "A" to "B"?

A. Yes, sir.

Q. Quite a good deal of water?

A. Yes, sir, quite a good deal of water.

Q. They were below the bottom of the fence, away below what you took as the *mien* water level?

A. Yes, sir.

Q. You considered the point from what you established as the low water mark?

A. I did not establish it as the low water mark, the line was run by Williams.

Q. And the point you took was the present water?

A. Yes, sir, and I do not say all of that fence was in the water, but part of it was.

Q. The last time that Mr. Hoffer ran the water line, did you go with him?

A. Yes, sir.

Q. Did he check out with the Williams line?

A. Yes, sir, not only checked out but in one or two instances the small hub that Williams set was gone and we set new ones and continued and found his other hubs that indicated his survey.

Q. Mr. Moore look at that map, the line marked "H" "C" "D" and "E," did you ever run that line north from "C"?

85 A. Yes, sir.

Q. What condition did you find points "D" and "E" in?

A. I do not know whether it is exactly spaced right, but that line where it struck the water before it got back to the lake was very deep water, so deep that I got a man to carry me across on his back. I did not have on my boots.

Q. When was that?

A. The first two weeks in May.

Q. Before Williams made his survey?

A. No, sir, about that time.

Q. Mr. Moore, when running on that East and West line from the point of beginning, did you strike water there, the North section line, running section line of Section Nine and the South line of section Three and Four?

A. I did not run the North line of section Nine. I took up Williams corner at point marked "C." I did not run the North line of Section Nine.

On cross-examination he said:

Q. Mr. Moore, you are in the employ of the Producers Oil Company?

A. Yes, sir.

Q. Of the engineering force?

A. Yes, sir, I am in the employ of the Texas Company, doing work for the Producers Oil Company.

Q. Did you ever examine Mr. Barnes' contour map of the land in controversy?

A. Not minutely, I glanced over it.

(Show witness map referred to).

Q. Is that about correct?

A. Well would take something of the general shape of the contour is about like mine. He assumes a different datum.

86 Q. But in general shape, about the same elevation?

A. Yes, sir, but I would not say that they are the same.

Q. You could not say they are wrong?

A. No, sir, I do not have any idea in the world they are wrong.

Q. Mr. Moore, what kind of trees did you find, where he designates as part of Cotton Shed arm, running Southwest?

A. For a considerable distance back in there I find the same kind of trees as out in the part marked open lake.

Q. How far?

A. I would say about to point marked "F," along in there. I know it ran back in there considerable.

Q. From there on you found the small cypress?

A. No, sir, no trees in there between the traverse line, running along the edge of the traverse line there is not anything but that grass.

Q. Find any cypress?

A. No, sir.

Q. What did you find there?

A. Just the grass.

Q. Find any beach?

A. No, sir.

Q. A low depression?

A. There is a low depression running on out towards the lake, there is no defined branch in there, but it is further on back.

Q. What is the width of that?

A. I did not measure it.

Q. You never measured it yourself?

A. Yes, sir, measured the traverse line.

Q. What direction does it take from point "G"?

A. Southwest as that depression line shows there.

87 Q. Is that the end of the depression?

A. No, sir. That is the end where the water would come, if two feet higher. The depression goes further back.

Q. Don't that low place, run all the way across that peninsular?

A. I don't think it does.

Q. Do you know whether it does or not?

A. If it did I would cross it in going from Oil City to Wilson Point, we call it Plum Point, and I do not recall crossing a place like that.

Q. You don't know of any low places in going from Oil City to that point?

A. Yes, sir, not there, but back up the other arm.

Q. Did you ever run the North line of Section Nine?

A. No, sir.

Q. Mr. Moore, did you ever check Mr. Williams' water line with the field notes, with his field notes?

A. I was in the office when he read them out and Mr. Hoffer platted them.

Q. Do you know it is correctly platted from the field notes?

A. I know that Mr. Williams was in the office, read them out and Mr. Hoffer platted it and Mr. Williams saw the map and pronounced it correct.

Q. Did you ever run the Williams Water line, since it was platted?

A. Yes, sir.

Q. And it checks out exactly?

A. Yes, sir.

Q. Ran from the field notes or what?

A. From the plat.

88 Q. And it checks out?

A. Yes, sir, with the exception of one place, there is an error in the plats, that is marked on the plat there a certain Course, I think that is on the Government traverse.

Q. That is on the Government traverse?

A. Yes, sir.

Q. Williams' traverse closed exactly?

A. Closed upon the stakes he set.

Q. You ran from the plat and not the field notes.

A. Yes, sir; from the plat and calls on the notes.

Q. Not the notes?

A. I considered it from the notes.

Q. Did you run from Williams' notes or from the plat?

A. From the plat.

Q. And it closed up exactly?

A. Yes, sir.

Q. You never ran the Barnes line?

A. No, sir.

Q. Simply platted it?

A. I did not plat it.

Q. Who platted it?
A. Mr. Hoffer.

89 *Testimony of P. Kaul.*

P. KAUL, witness for Plaintiff, being first duly sworn, testified as follows:

On direct examination he said:

Q. Mr. Kaul, you are familiar with the water on Jeems Bayou?
A. Yes, sir.
Q. How long have you lived up there?
A. A little over a year.
Q. How long have you been up around there?
A. About four years.
Q. You know the condition of the water as it exists today and as it has existed within the last week, whether high water or low water?
A. We call it low water.
Q. Has it often gotten much lower than it is now?
A. No, sir, I have only seen it lower once in my time.
Q. Mr. Kaul, at the ordinary stage of water, how much more water is there in the lake than at the present elevation, taking the present elevation say as one hundred, how much more water would be in the lake at ordinary stage of the water?
A. I judge that the water would be three feet higher.
Q. At the ordinary stage of the water?
A. Yes, sir, in other words be three feet deeper?
Q. Does it go higher than that along, or long enough to make a marked impression on the trees and vegetation?
A. Yes, sir.
90 Q. How long does it stay at that high stage, usually?
Q. I have known it to stay up six feet higher than it is now for a month or six weeks, then it would start to go down and go down gradually, may be go down an inch a day.
Q. When does it usually begin to rise?
A. Along in December, about this time of the year.
Q. When does it get down below the ordinary stage?
A. Along in July or August.
Q. You have been boating on the lake for quite a while?
A. Yes, sir.
Q. How long?
A. A little over a year steady.
Q. During that time you have noticed the changes in the water?
A. Yes, sir.
Q. You have not been over the water, that is up this line?
A. No, sir, not over the line.
Q. With a view of determining the line?
A. No, sir.
Q. Jeems Bayou is a navigable stream?
A. Yes, sir.

On cross-examination he said:

Q. Where do you live?
A. Up at Wilson's point.
Q. You are in charge of the Club house up there?
A. No, sir, I used to be, but I am not now.
Q. How long have you been living there?
A. Since the first of December, at Plum point.
91 Q. Only been living there about a year at Plum Point?
A. Yes, sir, only at Plum Point since the first of December?
Q. And how long at the Jeems Bayou Club House?
A. It was a year ago on the 27th of October.
Q. Where did you live before you went there?
A. Here at Shreveport.
Q. You have only lived up there since the time that you took charge of the Club house?
A. Yes, sir.
Q. Have you ever measured the height of the water in Jeems Bayou, that you speak about?
A. At certain places I have.
Q. Where?
A. Down at the Club house, where I had the boats tied.
Q. When was the highest water that you saw there?
A. In 1908 I think.
Q. The fall of 1908?
A. Spring I think.
Q. Late Spring of 1908?
A. Yes, sir.
Q. Was not that an extreme high water stage?
A. I suppose it was, all I know was the stage of the water.
Q. You made a mineral filing yourself on Plum Point, up there?
A. No, sir.
Q. One on Section sixteen?
A. Yes, sir.
Q. Was it on high land?
A. Just medium.
92 Q. It is above the ordinary stage of water?
A. Some of it is.
Q. That is Section Sixteen, Township Twenty Range Sixteen?
A. Yes, sir.
Q. How much land have you in there, above the ordinary stage of high water?
A. Probably thirty acres, somewhere along there about.

On redirect examination he said:

Q. Mr. Kaul, look at this map filed in evidence by the plaintiff and you see marked there, "Arm of Cotton Shed," with the contour lines.
A. Yes, sir.

Q. Do you know anything about the water in that arm of Cotton Shed?

A. Yes, sir.

Q. State what you know about it?

A. I know that it gets a good deal higher than it is now, and as a general rule stays higher than it is now.

Q. Have you any particular reason for knowing how high it was this Spring?

A. Yes, sir.

Q. What was it?

A. I was marking *hogs* in that part of the country?

Q. Can you state about how far back that water went, at ordinary stage of high water?

A. The only way I can answer that is where the tie line crosses. Now they say running down that section line came within fifty or seventy-five feet, it came within fifty or seventy-five feet of that tie line and this Spring when I was working up there it was up there to that line.

93 On cross-examination he said:

Q. What you refer to as the tie line is the section line?

A. Yes, sir, the tie line follows the section line.

Q. That is the North line of Section Nine and the South line of Section Four?

A. Yes, sir.

Testimony of Willie Rice.

WILLIE RICE, witness for Plaintiff, being first duly sworn, testified as follows:

On direct examination he said:

Q. Willie, how old are you?

A. 15 on the 28th of next July.

Q. Did you know Capt. J. M. Williams?

A. Yes, sir.

Q. Did you make a survey with him around the water line of this point known as the Briar point, shown on this map?

(Showing witness map.)

A. Yes, sir, we started at a quarter of a mile East from the South west corner of Section three and ran North.

Q. Did you run that line with Mr. Williams up there?

A. Yes, sir.

Q. That water line?

A. Yes, sir.

Q. When you ran that line with Mr. Williams, how far was the water, on an average from where he put the line?

94 A. Well it would average eight feet, the line would from the water.

Q. Average about eight feet?

A. Yes, sir.

Q. You ran all the way around with him?
A. Yes, sir.
Q. You ran the meander line, the Government line?
A. Yes, sir.
Q. You ran that with him?
A. Yes, sir.
Q. Did you run that more than once?
A. I do not think that we ran it but once.
Q. Did you retrace it?
A. I think we did.
Q. At the time that Mr. Williams ran that line, you say that the water was pretty close to the line he ran, all the way?
A. Yes, sir.
Q. About eight feet?
A. Yes, sir, at some points it was further.
Q. Did he set any stakes in the water?
A. Yes, sir.
Q. Would you know where that stake was on the map there?

(Shows witness map and witness points out place where stake was set in water at point marked "G").

Q. The stake was set here at the point marked "G."
A. Yes, sir.
Q. That one was set in the water?
A. Yes, sir.
Q. How much water was there?
A. Must have been about six inches, came up along here on my shoes. (Witness showing on shoes).
95 Q. How long have you been around that lake?
A. I have been there about a year.
Q. Is the water pretty low now?
A. Yes, sir.
Q. Was it lower or as low as you ever saw it the other day when you were there?
A. Yes, sir, it was as low as I ever saw it.
Q. When Mr. Williams ran that line did you notice whether he went through that part that had grass on it or not?
A. Yes, sir.
Q. Did he go through the grass or on the outside?
A. He went through the grass.
Q. His line went through the grass?
A. Yes, sir.
Q. What were you doing with Mr. Williams?
A. Flagman, and carrying the rod.

No cross-examination.

Plaintiff closes.

Counsel for Defendant offered in evidence map, showing shore line of Sections Nine, Ten, Fifteen and Sixteen, Township Twenty Range Sixteen made by T. E. Chalk.

Counsel for Plaintiff urges objection heretofore made, and admits that Chalk actually ran these shore lines and the map correctly shows the shore lines as run by him.

Objection is overruled by the Court.

To which ruling of the Court, Counsel for Plaintiff excepts and asks that this note stand in lieu of formal bill of exceptions.

Filed in evidence and marked exhibit No. 1.

96 *Testimony of H. E. Barnes.*

H. E. BARNES, witness for defendant being first duly sworn, testified as follows:

On direct examination he said:

Q. Mr. Barnes you are a registered Civil Engineer?

A. Yes, sir.

Q. Do you know who originally ran the lines of this mineral location in controversy?

A. Yes, sir, I did.

Q. When did you finish?

A. The second of April of this year?

Q. Examine this Map and state if it shows the true location of that mineral filing on the ground?

(Handing witness map).

A. Yes, sir, it does.

Q. When you ran these lines, was your line run during low or high water ?

A. High water.

Q. Did you run your line into the water?

A. Well, all of our stakes are set, we set our stakes above the high water, but in places we run across a slough here and there in three places we run across sloughs, holding water.

Q. Can you indicate those places.

(Witness indicates same on map, as being at points marked "A" "B" "C").

A. At points I have marked "AB" and "C," and at the extreme right end of the claim at point I will mark "D" there was a little branch of water.

97 Q. Mr. Barnes, what does the crooked line represent?

A. It represents the contour of the claim, as a whole, one foot contour lines, and the elevation is marked every five feet.

Q. You state on the legend of your map that the ordinary stage of water, of high water was 70.8 feet?

A. Yes, sir.

Q. You adopted that as you- datum for ordinary stage of high water?

A. Yes, sir.

Q. Where did you get that?

A. My datum of one hundred was arbitrary, but that was taken

as ordinary stage of water from the marks on trees etc. around the edge of the lake.

Q. You used your level in getting the high water marks?

A. Yes, sir.

Q. Are the marks plainly discernible?

A. Yes, sir.

Q. Taking the average stage of the water indicated on the trees the figures on this dotted line show the comparative elevation.

A. Yes, sir.

Q. Each line is a foot?

A. Yes, sir.

Counsel for defendant offered map referred to in evidence. Filed in evidence and marked exhibit 2.

Q. Mr. Barnes you state that every one of your posts were set up above the high water?

A. Yes, sir, with one exception, at the first corner after leaving the Government traverse, that stake was in the water, here at point marked "E."

98 Q. Was that just simply a depression?

A. Yes, sir.

Q. Mr. Barnes, have you examined the map made by Hoffer and Williams?

A. Yes, sir.

Q. Does that map correctly show your line?

A. No, sir, it don't.

Q. You heard them testify that they never ran your line?

A. Yes, sir.

Q. In what particular do they show your line wrong?

A. Well it shows the line on the East side of the claim right where we mark the water line December 16th, 1910, in black, it shows our line considerable East of the water line, while as a matter of fact our line is on the high ground above. (Witness marks "I" at point indicated, from "I" to "J." In running from "I" to "J," that is the one I am talking about, he shows our line in the water, according to the Williams water line and it is actual-y above the extreme high water. We put it up on dry land and in fact West of the line Williams run, which shows his map in error. Now from "I" to "K" he shows our corner at "K" in an arm or slough, when it is actually at a point on this map west of that corner. Now from "K" to "L" he shows our line East of his water line, while in fact at the Point "L" our line is by actual measurement, made Friday, forty feet from the water and evidently at the time of Williams' survey was about thirty feet East of the water, and his map shows it by scale practically one hundred and seventy feet. That shows that his map is wrong there. Our line from "L" to "M" as he shows the water crosses our line and actually the corner "M" is

99 one of the highest points on the west side of this land, and in extreme high water it does not go over this point.

Q. Mr. Barnes did you run the water line?

A. Yes, sir, in April, the first of April.

Q. Does Williams correctly show the water line?

A. His traverse don't come anyway near agreeing with my traverse and mine is at the water and his cannot be right according to this plat.

Q. I see on the Producers' map that they have Cotton Shed Arm divided into two arms, one South east and one South west, is that correct?

Objected to by Counsel for Plaintiff on the ground and for the reason this is an attempt to collaterally attack the Government survey, and the map attached to the Government survey.

Objection overruled by the Court, admitted subject to the objection.

To which ruling of the Court, Counsel for Plaintiff excepts and asks that this note stand in lieu of formal bill of exceptions.

A. I would not call that an arm of Cotton Shed.

Q. Is there a depression there?

A. Yes, sir, there is a depression going both ways, something like on this map, but not exactly as he shows it here.

Q. Which is Cotton Shed Arm?

A. This one on the East, East of the line marked on this map "I" "J."

Q. What is this slough that runs out South west?

A. It is just a slough, or hill branch. It naturally widens out as it gets to the Cotton Shed Arm.

Q. It carries the water from the hills?

A. Yes, sir.

100 Q. Do you find many of these sloughs or branches on Jeems Bayou and the lakes?

A. Yes, sir, in some places you will find them every quarter of a mile and some other places a few hundred yards, or a few hundred feet apart.

Q. They are the natural water courses that drain the water from the hills into the lake?

A. Yes, sir.

Q. They widen out as they approach the lake?

A. Yes, sir.

Q. Mr. Barnes, is there any vegetation in there?

A. Yes, sir, it is full of small cypress, and down near what he shows here as the present water line on this map, there are large cypress.

Q. Where do the small cypress begin?

A. The small cypress begin at point "P."

Q. What kind of trees are they?

A. They are just small cypress that grow in all the edges of bodies of water. You will find some on top of the hills adjoining other cypress trees, they are very thick.

Q. Are they the same kind that grow out in the water?

A. No, sir, they are small but-, solid but-, while those that grow in the water are what we call big butted cypress.

Q. Does that slough or water course, cross the quarter section line at all?

A. No, sir, not according to their survey. On the ground this slough is entirely East of that quarter section line, the line running between the South west quarter of South east quarter and the South east quarter of the South East quarter.

Q. The slough is entirely East of that line?

A. Yes, sir.

101 Q. Does it cross the section line, dividing sections Four and Nine?

A. Yes, sir.

Q. Is that the same slough that Bristol describes in his field notes as being fully of green cypress?

A. I would think so, from his description, and it is practically in the same place.

Q. Bristol crosses just East of the quarter section line?

A. Yes, sir, according to his field notes.

Q. Mr. Barnes, you have been up on this property when some pictures were taken recently?

A. Yes, sir.

Q. Mr. Barnes where was this Picture No. One taken from and in what direction?

A. Picture No. One was taken from the spot marked No. One, in the direction in which the arrow is pointing. This picture was taken from the point designated as No. 1, in the direction that the arrow points near the letter "J."

Q. That is on the Producers' map, which has been filed in evidence and marked Exhibit "H"?

A. Yes, sir.

Q. That is what William- has as open lake?

A. Yes, sir; that is what he marks as open lake.

Counsel for defendant offers picture in evidence.
Filed in evidence and marked Exhibit No. 3.

Q. Now, Mr. Barnes, picture No. Two, examine that and state from what point, according to the Producers' map, that picture was taken?

A. Picture No. Two was taken from a little North of Point "I" in the direction shown by the arrow, marked No. 2 on the Producers' map, North, in what he calls open lake.

102 Q. It shows land on the other side, where the derrick is?

A. Yes, sir.

Counsel for defendant offered Picture No. 2 in evidence.
Filed in evidence and marked Exhibit No. 4.

Q. Mr. Barnes, examine Picture No. 3 and state from what point it was taken and the direction it was taken?

A. Picture No. 3 was taken from a point close to the Corner "I" on the Producers' map, and the direction in which it was taken is designated by the arrow, towards the well of the Pure Oil Company.

Q. You see your own picture on there?

A. Yes, sir.

Q. At what point is your hand placed?
A. At the high water mark shown on the trees and ground around there in that picture.

Counsel for defendant offers Picture No. 3 in evidence.
Filed in evidence and marked Exhibit No. 5.

Q. Mr. Barnes, on the picture No. One filed in evidence and marked Exhibit No. 3, can you see the high water marks on the trees?
A. Yes, sir; it shows in the big cypress.
Q. Is that the mark from which you took your datum?
A. Yes, sir.
Q. Mr. Barnes, examine Picture No. Four and state where it was taken from and what direction it was taken?
A. That picture No. 4 was taken near the quarter section line and also near the line between Section Four and Nine, marked on the Producers' map as No. 4, beyond the point that they call Cotton Shed Arm.
103 Q. Just South of where they put the word "Cotton" in Cotton Shed Arm.
A. Yes, sir.

Counsel for defendant offered Picture No. 4 in evidence.
Filed in evidence and marked Exhibit No. 6.

Q. Mr. Barnes, where was Picture No. 5 taken from, and in what direction?
A. Picture No. 5 was taken along the traverse line, from a point about two hundred feet North of the Southwest corner of the mineral claim, looking North.
Q. What does the wire fence represent?
A. The wire fence represents the fence of the claim on the traverse line, the Government traverse line.

Counsel for defendant offered Picture No. 5 in evidence.
Filed in evidence and marked Exhibit No. 7.

Q. Mr. Barnes, examine Picture No. 6 and state where that was taken and in what direction?
A. Picture No. 6 was taken from the point indicated on the Producers' map as No. 6, looking a little North of East, nearly where we left the Government traverse in surveying the claim.
Q. Is this the point that Bristol in his field notes states that he set a stake and the marsh extends North?
A. Yes, sir.
Q. Do you recognize the last person in the distance?
A. Yes, sir.
Q. Who is that?
A. Mr. Cronnie.
104 Q. At what point is he standing?
A. At the traverse corner set by Williams, the same point referred to below that Bristol mentions as marked "Q" on the Producers' map.

Counsel for defendant offered Picture No. 6 in evidence.
Filed in evidence and marked Exhibit No. 8.

Q. Mr. Barnes, examine this Picture No. 7 and state where that was taken and in what direction?

A. It was taken from a point just south of the Northeast corner of the Southwest quarter of Southeast quarter of Section Four, looking South along the quarter section line.

Q. As established by who?

A. As established by Williams.

Q. Just above where he has "Cotton Shed Arm?"

A. Yes, sir.

Counsel for defendant offered Picture No. 7 in evidence.
Filed in evidence and marked Exhibit No. 9.

Q. Mr. Barnes, examine Picture No. 8 and state where that was taken and whether it was made in your presence?

A. Yes, sir; this picture was taken from point marked 8 on the Producers' map, in the direction shown by the arrow, looking towards the open lake.

Q. Did you see all of these photographs taken?

A. Yes, sir; I saw them all taken and marked the location on the map when they were taken.

Q. Are these trees shown here in the lake live or dead cypress?

A. Dead cypress stumps in the open lake.

Counsel for defendant offered Picture No. 8 in evidence.
Filed in evidence and marked Exhibit No. 10.

105 Q. Mr. Barnes, examine this Picture No. 9 and state where it was taken?

A. It was taken from a point a little Southwest of the point "I" on the Producers' map, looking Southeast along the line from "I" to "J." Line "I J" is marked by parties standing along the line with handkerchiefs.

Q. Who are the parties?

A. Mr. Cornes, Mr. Herold, Mr. Mason and myself.

Q. Standing along the line "I J?"

A. Yes, sir; on the line.

Q. What kind of trees to your right?

A. To the left over cup, live oak and pin oak.

Q. Is that line above the ordinary stage high water?

A. Yes, sir; one and a half to two feet above high water.

Counsel for defendant offered Picture No. 9 in evidence.
Filed in evidence and marked Exhibit No. 11.

Q. Now examine Picture No. 10 and state where and in what direction that one was taken?

A. It was taken at point marked 10 on the Producers' map and in the direction as shown by the arrow, looking towards the open lake as marked on the Williams' map.

Counsel for defendant offered Picture No. 10 in evidence.
Filed in evidence and marked Exhibit No. 12.

Q. Examine Picture No. 11 and state where that was taken and in what direction?

A. Picture No. 11 was taken from a point about one hundred feet East and fifty or sixty feet North of point "J" on the
106 Producers' map, looking a little west of North, paralleling the line of the claim.

Q. Can you distinguish the ground above ordinary stages of high water, from that covered with water in that picture?

A. Yes, sir; in this picture the East line of the claim is behind the small cypress trees shown in the left of the picture.

Q. These small cypress you testify, grow where water don't stand?

A. Yes, sir; where the water will reach once in a while, and stay a while and sometimes find them on high ground.

Q. The large cypress grow where the water stands?

A. Yes, sir.

Counsel for defendant offered Picture No. 11 in evidence. Filed in evidence and marked Exhibit No. 13.

Q. Examine Picture No. 12 and state where that was taken and in what direction?

A. Picture No. 12 was taken at the Northeast corner of the Southwest quarter of Southeast quarter.

Q. Looking in what direction?

A. That is a pin oak tree and red oak.

Q. What is the diameter of that tree?

A. The circumference of that tree is fourteen feet.

Q. What height above the ground as shown in the picture?

A. About five feet above the ground.

Counsel for defendant offers Picture No. 12 in evidence. Filed in evidence and marked Exhibit No. 14.

107 Q. Look at Picture 14 and state where that was taken and in what direction?

A. Picture 14 was taken from a point about thirty feet west of corner "K" on the Producers' map, looking East along the line of our claim.

Q. What is the stake in the ground there?

A. That is corner "K" on the Producers map.

Q. The one that Williams and Hoffer indicate in the lake?

A. Yes, sir.

Q. About where is the ordinary stage of the high water mark?

A. Practically at the foot of the stake.

Counsel for defendant offered Picture No. 14 in evidence. Filed in evidence and marked Exhibit No. 15.

Q. Examine Picture No. 13 and state from where it was taken and in what direction?

A. Picture No. 13 is taken from a point about twenty feet Southwest corner at "L" on the Producers' map, looking Northeast along the line of our claim.

Q. How far is it from where the lady is standing as shown in this picture to the point of ordinary stage of high water?
A. Twenty-five to thirty feet.
Q. The water marks are in front of her?
A. Yes, sir; a little west of her?
Q. About where on the map?
A. At "X." (Witness marks "X" on map.)
Q. How far is that?
A. Practically thirty feet from where the lady is standing in this picture.
108 Q. How far do Williams and Hoffer represent it on their map?
A. According to the looks of their map, about one hundred and seventy feet.

Counsel for defendant offers Picture No. 13 in evidence.
Filed in evidence and marked Exhibit No. 16.

Q. Mr. Barnes, you stated that when you ran the lines originally it was during a stage of high water?
A. Yes, sir; it was.
Q. Was the water, above or below, what you call the ordinary stage of high water?
A. That was right high water, a little above the average stage of high water.
Q. Above what you took as the datum on the trees?
A. Yes, sir; five or six inches above?
Q. At that time your boundary line was on high land?
A. All stakes on high land but one, with one exception, at the point marked "E," marked "E" on my map.
Q. Which is the contour map.
A. Yes, sir.
Q. Marked exhibit what?
A. Exhibit No. 2.
Q. Who took these different pictures?
A. They were taken by Mr. Bauer, Mr. Dambley's assistant.
Q. And they were all taken in your presence?
A. Yes, sir.
Q. Some were taken on the 11th?
A. Yes, sir; all taken on the 11th, some of them.
Q. The others were taken when?
A. Last Friday, which was the 16th.
109 Q. Who was present when they were taken?
A. Mr. Cornea, Mr. Herold and Mr. Mason, they were present when the first were taken?
Q. That is the first nine pictures?
A. Yes, sir; on Sunday and the same parties and Miss Hanzen and Mr. Montgomery and Mr. Loyd were present when the others were taken on Friday.
Q. Mr. Barnes, are any of Mr. Bristol's corners discernable?
A. No, sir; no evidence to show where his lines actually were, no corners or lines that you could trace.

By the COURT:

Q. No starting point?

A. I mean none of his marks, we had to run in there from a section further East and North.

Q. Have you ever found anyone who had found Bristol's corners?

A. No, sir; I do not know of any surveyors or anyone.

Q. Did Mr. Williams claim to find any of Mr. Bristol's corners?

A. I never heard of it if he did.

Q. You know of any Government corners in Township Twenty, Range Sixteen?

A. No, sir; nor I do not know of anyone else that knows one. I have heard that some one claimed a Government corner on the South line of Section Two, at the quarter corner.

Q. Did you ever hear of anyone claiming to find one of Bristol's corners?

A. No, sir.

Q. Have you ever ran Bristol's survey all around?

A. Not all of it, I meandered about three-fourths of that point down below the Club House and the Plum Point and Briar Point and know how the water line is.

110 Q. What have you to say as to the general character of Bristol's surveys, where he surveyed as much as half a mile?

Objected to by counsel for plaintiff as trying to attack a Government survey.

Same ruling as heretofore.

To which ruling of the Court counsel for plaintiff except- and asks that this note stand in lieu of formal bill of exceptions.

Q. Have you examined this Chalk map?

A. Yes, sir.

Q. State whether it is correct or not?

A. It is practically correct, within fifty or one hundred feet.

Q. You have run the lines?

A. Yes, sir; I have meandered practically three-fourths of the shore line.

Q. Have you made a calculation from the Chalk line on that map as to the relative amount of land surveyed by Bristol in Section- Nine and Ten and the country South of there and the amount that he left out?

Same objection as heretofore.

Same ruling of Court.

To which ruling of the Court counsel for plaintiff excepts and asks that this note stand in lieu of formal bill of.

A. Yes, sir. The green line shows the Bristol survey of 1871 and the black line shows the original Government survey in 1869 and the yellow line shows the boundary of the high land still unsurveyed by the Government.

Q. What number of acres?

A. Still unsurveyed, practically three hundred and twenty acres,

South of the Bristol survey in Sections Nine, Ten, Fifteen and Sixteen.

111 Q. You say three hundred and twenty acres unsurveyed?
A. Yes, sir.
Q. And how much surveyed?
A. 280.12/100 acres.
Q. Mr. Barnes, you have actually run correctly the line above in Section Four, North, the North line of Section Four?
A. Yes, sir.
Q. Can you state relatively the amount of surveyed and unsurveyed land above there in Section Four?

Above objection and ruling to apply to all evidence.
To which counsel for plaintiff excepts and asks that this note stand in lieu of formal bill of exceptions, and same is made general.

A. Surveyed in Section Four, twenty-three or twenty-four acres, and unsurveyed in Section Four, running a little into Section Three, according to our survey, eighty-seven acres, and there is even more unsurveyed land North of Lots One and Two, but I have not calculated the acreage.
Q. Lot No. One, according to the Government survey, contained 12.87 acres.
A. Yes, sir.
Q. And lot No. 2, 11.44 acres?
A. Yes, sir.
Q. That is all the surveyed land in Section Four?
A. Yes, sir; all the Government surveyed land.
Q. South of the lake?
A. Yes, sir.
Q. About how much land, how much is there in it South of the lake?
112 A. A total of practically one hundred and twenty acres. There is some unsurveyed land North of Lots One and Two, not in our claim.
Q. Land above the ordinary stage of high water?
A. Yes, sir.
Q. Is it very difficult to run lines in this country in the summer?
A. It was to me in April.
Q. For what reason?
A. Briars and thick timber, full of briars and it is uneven land a hard country to run through.
Q. About how many miles of traverse can a surveyor run with any degree of accuracy, with two chainmen and one ax man?
A. In that particular territory if a man ran over a mile a day I would say he was traveling.
Q. Do you think that he could do more than that a day, with any degree of accuracy?
A. He might do it, but I do not see how he could survey more than a mile a day with that crew.
Q. The underbrush is very thick?
A. Yes, sir.

Q. Are the briars particularly thick around the neighborhood of the Bristol line in dispute?
A. Yes, sir; that is about the thickest in that territory?
Q. And East of that?
A. Yes, sir; and West.
Q. This point that runs out there, by what name does it go?
A. Briar Point.
Q. From what does it get its name?
A. From the character of the growth, the thick briars.
113 Q. The briars cover this whole point?
A. Practically, it don't now, a great deal has been cleared down in there since all of these claims were filed, but when I ran around it the whole point was covered with briars.
Q. Where is Wilson's Point?
A. Almost half a mile west of that.

Objected to by counsel for plaintiff as Wilson's Point is established as the land surveyed by Bristol, and he is trying to designate a particular point jutting out, the Government surveyed what is called Wilson's Point.

Q. The Bristol survey?
A. Yes, sir; the point he traversed.
Q. Is not Wilson's Point known as Plum Point?
A. Known now as Plum Point.
Q. What is designated as Wilson's Point on the Bristol map you understand is designated by one name or another?
A. Yes, sir.
Q. It is the extreme Northwest point of this peninsula?
A. Yes, sir.
Q. The point of land, in which this mineral claim is located is known as Briar Point?
A. Yes, sir.
Q. Mr. Barnes, does the land in controversy form one continuous ridge?
A. Yes, sir; Briar Point all the way out, practically the same elevation as on Lot One by the Government survey. It is continuous point clear out. A continuous ridge I mean to say.

Court thereupon adjourned until to-morrow morning at ten o'clock.

114 December 20th, 1910, court met pursuant to adjournment.

H. E. BARNES, witness for defendant, being on the stand, his direct examination was resumed.

Q. Mr. Barnes, referring again to the map offered in evidence by the plaintiff and marked Exhibit "H," in running the actual line on the ground, what difference do you find between the Williams line, as actually run on the ground, as compared with your line on the map?
Q. Mr. Williams' line and my line going Southwest to the corner

"L," shown on map "H," there is very little difference on the ground between the two lines.

Q. Williams' line is East or West of your line?

A. A little North of point marked "L," Williams' line is ten or fifteen feet East, instead of West as he shows on the map. The point "L" on the may, by scale, his line to be 2.3 chains west of our line, while actually on the ground they are practically in the same place. We found where he cut the brush through the small cypress along the edge of the lake, which is close to the edge of the lake.

Q. You found no marks or monuments?

A. Only the track that he cut, but we also found the lake as actually on the ground to-day is forty feet west of our corner "L" and it gets deeper as it goes West, and he shows it 2.6 chains West.

Q. At low water it is only forty feet from your line?

A. Yes, sir.

Q. At high water how far is it west of your line?

A. Twenty-five to thirty feet.

Q. And he shows it how far?

115 A. Two chains and sixty links, about two hundred and ninety feet, allowing for the same error on the other side of his survey we would have placed point "G" according to the Williams survey—the same error on the other side would put his point 2.30 East of point "G," which would put it within thirty links of the line between the Southwest quarter of Southeast quarter and the Southeast quarter of Southeast quarter of Section Four.

Q. That line as run by Williams?

A. Yes, sir.

Q. Where do you place that dividing line?

A. I place the dividing line between these two quarter sections one hundred and sixty-five feet west of where Williams has it.

Q. Then how far East of your dividing line would the point "G" be?

A. The point "G" would be, if we are correct, one chain and 75 links East of my line.

Q. It would throw the entire slough, which Williams represents as Cotton Shed Arm into the East half of the Southeast quarter of Section Four?

A. Yes, sir.

Q. No part of it would be in the West half of the Southeast quarter of Section Four?

A. No, sir; no part of it.

Q. Mr. Barnes, what is the character of the vegetation upon Briar Point of the mineral filing?

A. Regular old woods, growth, big trees, small trees and briars, rich ground and high ground. Some of the trees are very large.

Q. What kind of trees?

A. Red Oak, Pin Oak, Post Oak, some gum. The picture there shows one Red Oak with a circumference of fourteen feet. That is a very large tree.

116 Q. What is the character of the vegetation in the slough?

A. Well, the Northeast end of this slough, from point

marked "P" North is low land, and from "P" Southwest is a narrow slough full of small cypress, etc.

Q. Small cypress, you mean the green hill cypress?

A. Yes, sir.

Q. Are they what is called water cypress?

A. No, sir.

Q. What is the character of the land in controversy, about the same as that South and round the Jeems Bayou Club House?

A. Yes, sir; practically the same, the same thing as the Southern port of Lot One here.

Q. The Jeems Bayou Club House is the Southeast quarter of Section Nine?

A. Yes, sir.

Q. Right in the Southeast corner of Section Nine?

A. Yes, sir; right in the Southeast corner of Section Nine and right adjoining the Club House is the field, but the adjoining land is the same as this.

Q. Do you know Mr. J. M. Williams' signature?

A. Yes, sir; I think so.

Q. Do you identify it on that map? (Showing witness map.)

A. Yes, sir; that looks like his signature.

Counsel for defendant offers in evidence map made by J. M. Williams showing shore line of Sections Nine, Ten, Fifteen and Sixteen, and offered for that restricted purpose.

Objected to by counsel for plaintiff in so far as it is a collateral attack upon the United States Engineer's surveys.

117 By the COURT: Admitted subject to the objection.

To which ruling of the court counsel for plaintiff excepts, and asks that this note stand in lieu of formal bill of exceptions.

Filed in evidence and marked Exhibit No. 17.

Q. Do you know the signature of J. R. Barber, formerly Parish surveyor of this parish?

A. I could not say that I do. I have seen it several times, but I do not know that I could swear to it.

Counsel for defendant offers in evidence survey of Sections Nine, Ten, Fifteen and Sixteen, made by J. R. Barber, Parish Surveyor.

It is admitted that the survey was made and the plat was made by Barber, but the evidence is objected to by counsel for plaintiff on the ground and for the reason that it is an attempt to collaterally attack the United States survey, and as irrelevant.

Admitted subject to the objection.

To which ruling of the Court counsel for plaintiff excepts and asks that this note stand in lieu of formal bill of exceptions.

Filed in evidence and marked Exhibit No. 18.

Q. Mr. Barnes, have you ever checked over as to the accuracy of the Bristol survey?

A. No, sir; I could not say that I have accurately. I do not know whether it is absolutely right or not.

Q. Have you carefully checked over the acreage of the land in controversy?

A. Yes, sir.
Q. How many acres?
A. The acreage shows 87.09 acres, the whole mineral filing. I have correctly checked that over, but I will state that that is
118 not absolutely correct, there is a little difference.
Q. In which way?
A. I think that it ought to be nearer 87 acres than 87.09 acres.
Q. It is not under eighty-seven acres?
A. No, sir.

On cross-examination he said:

Q. Mr. Barnes, you are one of the defendants in this case?
A. Yes, sir.
Q. When you originally made this survey, you made a mineral filing with it?
A. Yes, sir.
Q. Did you prepare a map showing it?
A. I did prepare a map, but did not file any map.
Q. You prepared a map that was given to your co-locaters?
A. Yes, sir; I did. I think two maps.
Q. Is that the map that you made at that time? (Handing witness document.)
A. I think that is a blue print of it, with the exception of same marks on this map.
Q. That is the red marks?
A. Yes, sir. I did not put the red marks on there. (Witness rubs out red marks referred to.)
Q. Did that correctly indicate the condition of that filing at that time?
A. It was not a map to indicate the conditions, it was to represent the boundaries of the claim. It is not a contour map of the claim, merely a boundary map.
Q. You tried to make your boundaries, as near as possible the water line.
A. Yes, sir; with a very few exceptions.
119 Q. Mr. Barnes, did you follow the traverse of the United States to any extent at all in making this mineral location?
A. Yes, sir.
Q. How far did you go?

Counsel for plaintiff offers map referred to in evidence.
Filed in evidence and marked Exhibit "K."

Q. How far did you follow the United States survey, and indicate on that map where you stopped the calls of the United States meander line?
A. I followed the United States survey from Point "A" to Points "B" and "C" and "K." (Witness marks letters "A," "B," "C" and "K" on map referred to.)
Q. Mr. Barnes, referring to your map "K," mentioned in your motion to bond, the calls reads as follows: "Beginning .56 chains west of the Southeast corner of Section 3, Township 20, Range 16,

at a stake, run thence West 48½ chains, thence North two degrees East six chain-, thence North fifteen degrees West three chains, thence North forty-seven and a half degrees East 2.5 chains, thence North sixteen degrees West 2.5 chains." That is where you stopped?

A. Yes, sir; I think to point "C," marked wrong on that map. (Witness changes "C" on map referred to.)

Q. Were you making an accurate survey?

A. I think you would call it an accurate survey.

Q. Then why did you run South 86½, if you would run south 86 if you correctly followed that line?

A. I do not know; I run South 86 degrees West; I do not know what the mineral claim shows.

Q. Then you followed the calls of the answer and not the calls of the motion?

120 A. I do not know what the answer calls for. I followed the Government calls to that point.

Q. Now when you left that point, how far did you run on your next call?

A. My memory is not that good. I will have to refer to something else. (Witness examines mineral filing.)

Q. Now Mr. Barnes was this map platted from your field notes after you came back?

A. Yes, sir; hurriedly platted, but I think that it is very near correct.

Q. Have you compared that with this map filed in the suit?

A. I don't think that I have seen it since I made it, but I think the map is accurate, even at that.

Q. Now let us follow the calls, leaving the point marked "C"?

A. Leaving point marked "C," thence North seventeen degrees eighteen minutes West 2.05 chains, thence North ten degrees East 2.5 chains.

Q. Did you run 2.5 or two and 5/100?

A. I am reading from a copy of the mineral filing, and if this copy is not correct I do not know. I cannot remember whether I run 5/100 or 5/10. I can go and get the mineral filing that is on record. I want to state that this copy that I am reading from is not a certified copy, and I will not swear that it is correct. I ran North seventeen degrees and eighteen minutes West two and five-tenths chains.

Q. Can you scale that and see whether it is 2 and five tenths or two and five hundredths?

A. I can see that it comes very close to it.

Q. What?

A. Two and five-tenths. It is practically two chains on the scale.

121 Q. Then *in* the answer stating it as two and five-tenths is incorrect?

A. It looks like it to me.

Q. Then North ten degrees East 2.5 chains, thence North eighty-four degrees and thirty minutes West 3.75 chains, thence North two degrees fifty-four minutes East 2.2 chains, thence North fifty-one

degrees twenty minutes East three chains, thence North 52 degrees twenty-seven minutes East 7.61 chains. Then this answer is wrong when it says East 30 chains, it should be three chains?

A. If it says thirty chains it is wrong.

Q. Is there anything on there to show that these two calls on the map, shown to be one call?

A. This map is very small, on a very small scale and North fifty-one degrees East twenty minutes, and North fifty-two degrees 27 minutes East, are so close together that the change would not be visible on this scale. The total distance of the two courses is 1,061 chains, and put to scale it shows ten chains, which is a small scale and the plat is drawn and it is liable to have shrunk—then North one degree twenty-three minutes West 5.33 chains, thence North seventy-four degrees thirty-six minutes East ten chains, thence South twenty-five degrees and six minutes East six chains, thence South nine degrees.

Q. Does that follow this map?

A. Yes, sir; that follows with the map.

Q. Thence South nine degrees fifty-five minutes East 3.50 chains, does that follow the map?

A. Yes, sir.

Q. Thence South forty degrees and fifty minutes East twenty-one chains, does that follow the map?

A. Yes, sir.

122 Q. Thence South sixty-six degrees and forty minutes East 6.50 chains, does that follow the map?

A. Yes, sir.

Q. Thence North eighty-one degrees thirty minutes East three and a half chains?

A. Which follows the map.

Q. Thence South eighty-three degrees forty minutes East eight chains?

A. Which follows the map.

Q. Thence South eighteen degrees forty minutes, East 6.25 chains to the place of beginning?

A. Which follows the map.

Q. Now Mr. Barnes, you stated that the location as shown on the map marked Exhibit "H"—will you apply this same scale that you applied to the small map, to the large map marked Exhibit "H" introduced by the plaintiffs in this case and show us wherein the inaccuracies occur?

A. I cannot do that without a protractor showing the direction of the lines and the scale.

Q. You have never yourself examined it to see?

A. I have never examined the map.

Q. Have you ever had this map in your possession?

A. Yes, sir; I have had a copy of it.

Q. You have never made any effort to examine it to see whether the map is correct or incorrect according to the calls?

A. Yes, sir; I checked his field notes from the start to finish by latitude and departure.

Q. I am talking about his following out the calls?

A. I have not scaled it, except where he shows the difference, where I have already stated.

Q. Where he shows it in the water?

123 A. Yes, sir; and where he shows away up on land and we are actually near the water.

Q. Since you originally built your fence, have you ever retraced it, with a view of discovering whether the fence was made on the calls?

A. I have been over it several times, and our fence is in no place over six or eight feet from the line.

Q. Have you ever, with a view of ascertaining whether you were on the line made a resurvey?

A. No, sir; our lines are well marked, hacked all around.

Q. You have not made a resurvey?

A. The only resurvey I calculated my traverse notes to see if they closed.

Q. Did you make these measurements from having ascertained, by a survey, according to the calls of the Williams survey? Have you attempted to fix the Williams survey according to the calls?

A. No, sir; I have not.

Q. You have neither run your own survey, or his survey?

A. No, sir.

Q. The measurements which you made and which you testify to were made from the conditions that you found on the ground, which you judged to be his line, and which was your fence line?

A. The measurements that I have stated at the different points between my line and the Williams line, were taken from my corners, which were easily identified and the water line and the line of brush cut, showing the direction taken by him in his survey.

Q. Was your fence on your corners?

A. Within a foot or two, some place nailed to the corner

124 post.

Q. When you ran twenty-one chains along this line, that is an unusual long line to run?

A. Yes, sir; that is a pretty good stretch.

Q. Why did you run that long line, what was your object in running that way?

A. Just the same as it was any other line.

Q. All the rest are short calls and the stations not far apart?

A. That is the longest one in there.

Q. Is it not a fact that the reason that you ran a long line that it was through the water and you wanted to put your station on high land?

A. Part of that was through the water. I did not stop when I got to dry land and make a station there.

Q. Why did you not stop when you got to dry land and make a station there?

A. Because I followed the dry land, on the edge of the water for quite a ways before I put a stake.

Q. Then you did not put your stake when you got to dry land?

A. No, sir; I followed the dry land for quite a distance, before I set a stake.

Q. About how far?

A. I think about four hundred feet, that was during high water and I did not measure it, but possibly more than that.

Q. Did you put your stake very near the high water line, when you began to run at point marked "J?"

A. At the point "J" our stake was west of the high water, in the neighborhood of forty feet, approximately forty feet. I will not say exactly as I did not measure it, but it was near about forty feet.

Q. How long have you been familiar with that land and water up in that part of the country?

125 A. Well, with general conditions, did not know anything until since this location, since the location of this claim, but I have known for five or six years that this point of land was there outside of the Government traverse.

Q. Ever been up there?

A. Yes, sir; all over that lake, been on that point, but not to identify it by any line in making a survey.

Q. You observed the contour of this arm of the lake that went in, the arm we refer to as being the arm of Cotton Shed according to the Williams survey, the line as shown in the contour? Have you been up there sufficiently to be familiar with the conditions of the contour prior to your location of the claim?

A. No, sir; I have not because I did not know the location of the lines.

Q. The general shape of the arm of the water up there you have an idea of that?

A. Yes, sir; to a certain extent.

Q. Have you not made a map of the Northern part of this parish, which you sold throughout the parish?

A. Yes, sir.

Q. Examine this map and see if that is one of your maps? Handing witness map.)

A. Yes, sir; that is one of my maps.

Counsel for plaintiff offered same in evidence.
Filed in evidence and marked Exhibit "L."

Q. Mr. Barnes, have you made any other tracings or any map for the Caddo Abstract Company lately?

A. Yes, sir.

Q. Did you have any connection with the map of ownership in the Caddo field, gotten out recently?

A. No, sir; they several, but I did not make any of them. I think Mr. Allen made them.

126 Q. You know the Caddo Abstract Company?

A. Yes, sir.

Q. Are any of the defendants members of the Caddo Abstract Company.

Objected to by counsel for plaintiff as irrelevant.
Objection overruled by the Court.

To which ruling of the Court counsel for plaintiff excepts and asks that this note stand in lieu of formal bill of exceptions.

A. To my knowledge I do not know who they are, I have not seen any of their credentials.

Q. You know the Hanszen-Mason Realty Company?

A. I know Miss Hanszen and Mr. Mason.

Q. They are co-defendants?

A. Yes, sir.

Q. On this map recently issued by them it shows the East line of your mineral claims as in the water?

A. It does.

Counsel for plaintiff offers map referred to in evidence.

Objected to by counsel for defendants on the ground and for the reason that it is not shown by whom it was prepared, that the Hanszen-Mason Realty Company are no parties to this suit, and that none of their acts or declarations could in any event apply to the other defendants in this case.

Objection overruled by the Court, same going to its effect.

Filed in evidence and marked Exhibit "M."

Q. Mr. Barnes, when you run these lines, how long did it take you to run it?

A. I was a little over three days locating this claim and the lines all around it.

127 Q. That is, finding the starting point and all?

A. Yes, sir; took half a day to get started, half a day before we were on this property.

Q. You actually worked on this property how long?

A. Practically three days.

Q. Practically three days?

A. Yes, sir.

Q. And half a day that it took you to get on to the property?

A. No, sir; took over three days to make the entire survey. I was up there four days.

Q. Mr. Barnes, when you first ran this survey, you run it with the intention of being absolutely accurate?

A. Yes, sir; and it turned out to be accurate.

Q. You checked it back?

A. Yes, sir; according to the field notes, and it checked very close.

Q. Did not check it on the ground?

A. No, sir; because it was not necessary, because the field notes almost closed. Made a very close close.

Q. Mr. Barnes, in taking these pictures did you have any instrument at all to measure the respective distances from any given point?

A. No, sir.

Q. Did you have any compass to show the directions?

A. No, sir; I did not.

Q. Then the arrows that you have put on here are guess work?

A. Yes, sir; but I consider them pretty good guesses. I know that territory, know the territory thoroughly.

128 Q. Now Mr. Barnes, this picture that is No. 7 Exhibit No. 9, I wish you would please examine it? Now Mr. Barnes, what direction was that picture taken?

A. That is looking due South. Looking South along the section line.

Q. You marked it on this map "H" at the arrow there, No. 7?

A. Yes, sir.

Q. Now that picture was taken looking down hill?

A. Not in the foreground.

Q. What are the trees in the distance, cypress or what?

A. The trees in the extreme distant- are down hill.

Q. The trees that show below the large trees are cypress?

A. Yes, sir; on lower land and could not show the character of the trees that far off.

Q. Can you not tell from the growth in there what it is?

A. No, sir.

Q. You cannot? You cannot tell a thing about that?

A. I can see the trees here in the distant-, but they are not plain.

Q. That is away off?

A. Yes, sir.

Q. You cannot testify as to the trees there, could not tell by the way the branches are?

A. No, sir; there is not a cypress tree in that picture discernable. If you will mark a cypress in there I will tell you whether it is or not.

Q. Now Mr. Barnes, that is on the quarter section line run by Williams?

A. Yes, sir.

129 Q. It does show that there is an open space below the trees where the men are standing?

A. It shows a lower place there.

Q. There is not any large trees distinct, a little behind that?

A. No, sir; it is blurr of the timber on the background.

Q. That blurr seems to be quite a distance?

A. There is a lot of trees all around there, just a line cut through there.

Q. Are there any trees on the left-hand side that seem to be close up there? Now Mr. Barnes, examine this Picture No. 10, Exhibit No. 12. Now looking at the map "H" you say that that picture was taken out in what we show to be the bed of the lake?

A. Yes, sir.

Q. Can you see the water line on any of these trees there?

A. Yes, sir.

Q. About how high is that water line?

A. Between four and five feet.

Q. They are large trees?

A. Yes, sir.

Q. Large cypress trees?

A. Yes, sir.

Q. Are there any other trees in this picture, except cypress?

A. I do not think so. I do not see any but cypress.

Q. Now Mr. Barnes, look at Picture No. 13, Exhibit No. 16, taken near the water line on the West side of the point?

A. This picture is taken from a point a little Southwest of corner "L" on map "H," looking Northeast practically along the line of our mineral claim.

130 Q. I see you have an "X" on there, what does that indicate?

A. That represents where we supposed the water was at the time that Mr. Williams made his survey.

Q. That practically represents what you think was the Williams survey?

A. The water at the time that he made his survey.

Q. Are there any indications in there where Williams made his survey?

A. Not in the picture.

Q. Were there any indications in the field there?

A. Yes, sir. Right North of this corner where the lady is standing were indications where he cut through along the shore of the lake, which practically coincides with our line for a very little difference.

Q. Is not that section pretty clear around there?

A. Some places it is.

Q. Are these many briars in there?

A. Not a great many.

Q. Very brushy?

A. Yes, sir; in places.

Q. As a matter of fact down through the line that Williams ran from point "J" down to point "G," did you examine that line at all?

A. Yes, sir; I have been over it lots of times.

Q. In that part does Mr. Williams' line run through the briars to a very great extent?

A. It runs through the brush, woods. We did not trace his line the entire distance down through to point "J," the only part we found was near the lines at "G" and "H."

Q. Is it not, is there not a space between the lake and the grass as shown in the picture, on which no vegetation grows, on Picture Thirteen, Exhibit No. 16?

131 A. There is a space of practically ten or twelve feet.

Q. Then there is a growth of grass just beyond that?

A. Yes, sir; small cypress and grass.

Q. The growth of grass, how far back does that extend?

A. That extends twenty or twenty-five feet.

Q. Was not Mr. Williams' survey run partially through that growth of grass?

A. At this point it was.

Q. All the way around?

A. I could not tell, I never traced his line except in places, at this point we did trace it.

Q. Mr. Barnes, look at your map, about point "J" on map "H," was not Mr. Williams' line along there run through that grass?

A. His line there was run considerably East of our line and through some small growth of trees there.

Q. Grass still growing there?

A. I do not think it is. I think that it ran through this timber all the way. I think that he cut the growth from point "I" to point "J."

Q. Will you positively state that it did not run through the grass from point "I" to point "J"?

A. I will not state there was not any grass, but I will state that he ran through the brush, through the bushes.

Q. Don't you know that the grass grows there?

A. It grows outside of the bushes.

Q. Is there not a growth of grass on both sides of Mr. Williams' line, from point "I" to point "J"?

A. I have not traced the line from point "I" to point "J." I know that where he comes out at point "I" that it is a very thick thicket and at point "J" it is thick and the direction that he makes,
132 makes it apparently in that all the way through there. I know that he is away East of our line and here he shows it away West.

Q. Mr. Hoffer shows your line to be East of it?

A. Yes, sir.

Q. Mr. Barnes, what is indicated by the stretch of land shown on Picture No. 13, Exhibit No. 16, before you get to the grass, from the water?

A. That indicated, looks like sediment, oil sediment where the water has gone down and left the oil over the land there, a strip of about ten feet.

Q. Is there any growth on there?

A. No, sir.

Q. You think that the oil killed that growth?

A. I would not say. As I said before with moderate low water and low water, that is the stage of low water.

Q. And there would not be any growth there?

A. No, sir.

Q. Now Mr. Barnes, examine Picture No. 10, Exhibit No. 12, and say if the conditions are not practically the same there? See if those conditions are practically the same?

A. No, sir; nothing like the same.

Q. Why not?

A. This is out in the arm of the lake, where the big cypress are. There is no difference between the two water lines, that is all dry, and on the same level, not any undergrowth on that land, there is none.

Q. There is none?

A. No, sir; except the cypress, no undergrowth.

Q. Now examine Picture No. 11, Exhibit No. 13; now Mr. Barnes, that picture clearly defines the grass and the cypress trees and the part of the ground that has no vegetation on it?

133 A. Yes, sir; it does.

Q. I believe that you have stated, that up to the grass, indicates about the condition between moderate low water and low water?

A. Yes, sir; I think so.

Q. Now from the grass on back, what do you say that indicates?

A. How far back?

Q. To the edge of the grass, just across the grass?

A. I would consider in high winter water it would probably get over that grass, shows about the edge of the high winter water.

Q. Don't that grass grow all the way back into what you call the slough there?

A. No, sir; not for any distance.

Q. Is there not grass growing at point "G" on the map?

A. No, sir; the grass don't go West of this quarter section line.

Q. No grass grows west of the quarter section line?

A. Yes, sir.

Q. You state that as a fact?

A. Yes, sir; I have followed that line through.

Q. No grass there West of the quarter section line?

A. No, sir; there is not. We went across, and it stops at the quarter section line. It come up to practically the section line, and in some places ran over five or six feet, but the quarter section shows East of point "G" to be practically the edge of that bottom.

Q. You stated that this slough would run in West of that line shown by Williams to be the quarter section line?

A. No, sir; I did.

134 Q. What did you state?

A. I stated that this slough ran South and East of this line.

Q. You said that it run West of some line, that line that you established as the quarter section line?

A. I did not state anything about that slough.

Q. Didn't you make the statement a while ago about the measurement over there?

A. I stated to Mr. Herold, that if I ran the quarter section I would run one hundred and sixty-five feet West of Williams, that is the difference in our surveys.

Q. And the lake would show to be about forty feet west of the corner of that section line?

A. No, sir; I did not state that.

Q. Would run over your section line?

A. No, sir; would not come near it.

Q. Would not come near it?

A. No, sir; our line would be on high ground entirely, if you run through there one hundred and sixty-five feet west of the Williams line, would be one hundred and sixty-five feet West of the Williams line and on high ground.

Q. Your quarter section line would not run through the slough?

A. No, sir.

Q. Mr. Barnes, have you read the meander calls of the Bristol survey?

A. Yes, sir.

Q. On page 5 of Exhibit No. "A" with the heading, Township Twenty, Range Sixteen West, continued, the calls read: "17.03 a cypress 12 inches in diameter. 18 chains fifty links a deep slough full of green cypress. Offset four chains South, thence West 3.50 chains to a point, thence North 4.00 chains to a point on the East bank of the slough, and in the North boundary line
135 of Sec. 9." He said that he ran over the slough?

A. Yes, sir.

Q. And that he set his next station on the boundary line of Section Nine?

A. On the West side of the slough.

Q. Ought to be on the West side of the slough?

A. Yes, sir; instead of the East side.

Q. Adding the three and a half chains to the eighteen and a half chains would not that throw this station West of the quarter section line?

A. He has four chains offset. There is no way of telling whether the slough runs straight or crooked. If the slough ran straight North and South would set it in the slough.

Q. So the slough actually crosses the section line?

A. To do that the quarter corner would be in the slough at that point.

Q. Mr. Barnes, examine Picture No. 2, Exhibit No. 4, there is a fence running through the water?

A. That is the fence line belonging to the claim of Kendall and Ratcliff.

Q. That fence line does not mark your claim?

A. No, sir; it continues South along the line "I J" in the map "H," through the water, down there as Kendall and Ratcliff claim, that is their wire fence.

Q. Have you a wire fence up in there?

A. Yes, sir; but not shown in this picture. I know that Kendall and Ratcliff claim runs out into the water.

Q. Yours don't show on that picture?

A. No, sir; I don't see it there. It is taken near our corner.

Q. This Kendall and Ratcliff fence runs along by the side of your fence?

A. Not at this point.

136 Q. Mr. Barnes, is it not a fact that if the line platted in red is the line of your claim on map "H" is correct, from your field notes, that your fence on the ground is not correct?

A. No, sir; that is not a fact, you have just reversed it. Our fence on the ground follows our claim with the exception of some places where there is no fence at the time, up around the camp.

Q. I want to know, if the line platted on the map "H" is correct, from your field notes, if the line is correct from your field notes, then are you not willing to admit the line on the ground and the field notes will not tally?

A. In the first place, the line platted on your map, as our claim may be *a w ehole aright,* but it is not in the right place on the map. It don't show the location of our line and the water line comparatively correct in any respect. Again the field notes of our survey, I will admit will not exactly close, but I am willing to let any surveyor say whether the error is small enough to say whether or not it is a very good close.

Q. Mr. Barnes, did you ever make a measurement on the ground from the point that you took, as the point called for in the Bristol survey as 24½ chains, just after he had crossed the slough, just now referred to? Did you ever make any measurement from the point established by you, and the line running North, six chains from the point established by Williams, to see what the distance would be?

A. No, sir; but I have measured between his corner and my corner at the Northeast corner of Soction Nine and the Southeast corner of Section Four.

Q. What is the distance there?

137 A. Ninety feet South and one hundred and sixty-four or one hundred and sixty-five feet East of my corner.

Q. Now, Mr. Barnes, did you make a measurement indicated on this map as 597 and 450?

A. No, sir; I did not.

Q. Would your measurement correspond with that?

A. I do not think it would.

Q. On the ground?

A. No, sir; that is the difference East and West.

Q. Ninety feet?

A. Practically ninety feet.

Q. It shows forty-seven links?

A. Yes, sir; which would be ninety-six or ninety-seven feet and the difference I made at the corner of Sections Three, Four, Nine and Ten was practically one hundred and sixty-four or one hundred and sixty-five feet.

Q. Now Mr. Barnes, how did you identify that corner of Mr. Williams from which you measured, as the Williams corner?

A. Well, I traced his line from the East and found his four hacks along his line and found a new "W" on the trees, and that line practically agreed with mine East and West, and the trees were marked but they were marked out, the "W" cut out and a new corner established at the corner of Sections Three, Four, Nine and Ten.

Q. Was there any stake there from which you measured?

A. No, sir; the stake was not there, in filing the Green claim he took it out. I will also state that I have measured East and

138 North through Section Three and I identify that as the Williams corner as he ran out other lines in that section.

Q. So you think that your measurement of one hundred and sixty-five feet is nearly correct to show the difference in moderate low water?

A. It was at that point. I do not know what the difference is

between his meander line and line, it should be about one hundred and sixty-five feet.

Q. Mr. Barnes, you say that you have estimated the total amount of acreage in your mineral filing?

A. No, sir; I calculated it.

Q. You calculated it?

A. Yes, sir.

Q. It is about eighty-seven acres?

A. Yes, sir; I think that eighty-seven acres is correct, is closer to the correct acreage than 87.09, because our final measurement in closing the survey longer than we actually took to calculate the acreage and that would make the acreage a little shorter than 87.09.

Q. Have you ever calculated the acreage that you claim in your mineral claim, falling in Section Three?

A. No, sir.

Q. Have you ever calculated the acreage we contend is in dispute, taking the Williams water line as the boundary line down to the quarter corner marked "C?"

A. No, sir; I never did know what you contended for.

Q. You knew that you had the Williams map all the time?

A. I have seen it.

Q. You knew what we contended was his water line?

A. I know what he shows as the water line.

139 Q. You never made that estimate of what we are contending for?

A. No, sir; I have not.

On redirect examination he said:

Q. Mr. Barnes, examine that map, Exhibit No. 2, can you state the distance from the meander corner on the section line to Cotton Shed Arm?

A. I can estimate it by scaling it. (Witness scales map.)

Q. Say, from the quarter corner to the Cotton Shed Arm?

A. Of what corner?

Q. Corner from the line between the Southwest quarter of the Southeast quarter and the Southeast quarter of Southeast quarter on the section line.

A. Eight hundred and fifty to nine hundred feet East.

Q. At what point?

A. At the Northeast corner of the first quarter and the Northwest quarter of Section Four.

Q. How far is the intersection of the quarter line on the Northern boundary of Section Nine from the Cotton Shed Arm on the East, due East?

A. It is about 2,640 feet, about half a mile.

Q. How far is it from the common corners of Sections Three, Four, Nine and Ten, North to the Cotton Shed Arm?

A. A little short of a quarter of a mile.

Q. How much land lies South of Cotton Shed Arm and North of the section line?

A. It leaves lying Southwest of the arm of the lake, the whole eighty-seven acres.

140 Q. Can you state how much land is in Section Four, South of Jeems Bayou and Southwest of Cotton Shed Arm and between the quarter section line and Eastern Boundary of the section?

A. Yes, sir; I can estimate it. I suppose that there is about fifty-acres.

Q. About how much land would there be in Section Three South of Cotton Shed Arm?

A. It looks like there is about twelve or fourteen acres.

Q. Mr. Barnes, examine map marked Exhibit "M" and state whether you recognize that as a map that Chalk made?

A. Part of it is, that part in Section Four. I do not know whether it is a copy of the Chalk map or not, but that part in Section Nine, Ten, Fifteen and Sixteen looks about like the Chalk map, but the Chalk map does not show the lines of our mineral claim in Section Four.

Q. Take that as the Chalk map, can you show in pencil lines, taking your corners instead of Chalk's corners, where the mineral claim would be located? You know how much difference there is between you and Chalk's corners?

A. Yes, sir; practically two hundred feet.

Q. Can you designate it on the map?

A. I cannot draw it to scale, but I know that it would go North and West considerable of the Chalk lines.

Q. Would it throw your mineral claim away to the East?

A. Yes, sir. A difference there of one hundred and sixty feet and that would throw our mineral filing over, and our mineral claim would follow what he shows as the water line very close.

141 Q. Mr. Barnes, what is that white line shown on that map, the irregular line?

A. The traverse line by Bristol in 1871.

Q. Now Mr. Barnes, referring to map "L," filed in evidence, state how and when you came to prepare that map?

A. The map was prepared in January, 1909, and merely as an ownership map of the different sections in the oil field, and the location of railroads and water courses.

Q. Had you any knowledge of this territory in question then?

A. No, sir; not from actual surveys.

Q. What did you plat that map from?

A. Part of this map is platted from the Government field notes and part from hearsay, as Jeems Bayou point there.

Q. Simply made up as an ownership map?

A. Yes, sir.

Q. Not with any view of accuracy?

A. As near as I could get it.

Q. Did you know anything of Section Four then?

A. No, sir; had not been on Section Four except at the extreme point of this land.

Q. Mr. Barnes, will Capt. Williams survey close exactly?

A. No, sir; it will not by calculation.

Q. You spoke of finding "W" cut on trees, what would that indicate?

A. It indicated the bearing trees for Williams corners.

Q. Did Capt. Williams use "W?"

A. Yes, sir. He may have put in some corners without putting a "W," but he did not put a "W" without it was his corner.

142 Q. How was that done?

A. Cut the bark with "W," did most of it himself, would not trust to anyone else.

Q. From what direction did that slough run in, as it crossed the section line?

A That small slough where it crosses the line between Sections Four and Nine, it runs almost North, then Northeast, it turns in Section Four, North of the section line, and goes Northeast across the section line, runs almost due North.

Q. Before it crosses the section line does it turn within Section Four, before reaching the South line of Section Four?

A. Yes, sir; runs Southwest to South before it crosses the South line of Section Four.

Q. So that it is not a straight slough?

A. No, sir.

Q. Has curves?

A. Yes, sir; curves from Southwest to South.

143 *Testimony of W. R. Montgomery.*

W. R. MONTGOMERY, witness for defendant, being first duly sworn, testified as follows:

On direct examination he said:

Q. Montgomery, where do you live?

A. Shreveport.

Q. You have been living here a good many years?

A. Yes, sir.

Q. Were you up on the land in controversy in this suit on last Friday?

A. Yes, sir.

Q. For what purpose?

A. I was taken up there to look at the difference in the two surveys and to locate the water land, lay of the ground, etc.

Q. You are familiar with the character of land around Shreveport?

A. Yes, sir.

Q. You know the difference between the vegetation and grass in the hills and the bottoms?

A. Yes, sir.

Q. Speaking generally, what is the character of the land in controversy, the mineral filing?

A. Well, I do not know what is really in controversy.

Q. The mineral filing.

A. I did not go all over it, I went over the high land known as the point.

Q. What kind of vegetation did you find there?

A. Large growth of trees, hickory, ash and gum?

144 Q. Covered with oak?

A. Yes, sir; hickory, some gum, the trees that grow on high land.

Q. Regular hill growth?

A. Yes, sir.

Q. Mr. Montgomery, this is the map made by Mr. Hoffer, and has been filed in evidence and marked Exhibit "H," was the line shown on here, and marked "C" to "E" point- out to you, as the line run by Williams and Hoffer?

A. Yes, sir; as the Williams survey.

Q. Mr. Montgomery, does Cotton Shed Arm, at any place, touch that line?

A. The arm or slough designated, running out in this particular way worked on out——

Q. Call it an arm or a slough?

A. It is more of a slough, and it touches the quarter section line.

Q. You mean the line shown on this map from "C" to "E?"

A. Yes sir; "C," "D" and "E."

Q. With reference to that designated arm, what is the character of the ground?

A. Well, the character of the ground, it appears to be a drain from the slope of the hill, and it is lower as it goes on towards the lake, but from that on up it is the natural drain from the slope of the hills.

Q. You find these drains all along?

A. Yes, sir; all up and down the lake, in fact on any body of water.

Q. What was the character of the vegetation in it?

A. Small cypress, was about all that I saw.

Q. About what point is that you are speaking of?

A. About where "P" is marked on the map.

145 Q. Does this slough drain back the direction and distance that map would indicate?

A. No, sir; it does not, the slough goes towards the section line "C," "D" and "E," and as it gets within about fifty feet of the line it goes due South, probably a little water might spread over this line, but the channel of it does not take this direction.

Q. How far back have you gone on that drain?

A. Gone all the way through to this corner marked "C."

Q. Then that arm or drain or slough, or water course, whatever you call it, don't cross the line marked "C" and "D"?

A. No, sir.

Q. It was pointed out, the line "C" — "E," by whom was it pointed out on the ground?

A. I went up and down the line with Mr. Barnes and Mr. Martin.

Q. Mr. Martin is an engineer?

A. Yes, sir.

Q. Did you see Williams' hacks along the line?
A. Yes, sir; I saw what was said to be Williams' hacks.
Q. What did you see, see any "W's" on the trees?
A. Yes, sir.
Q. Was Barnes' quarter section line pointed out to you also?
A. No, sir; I think not.
Q. You *say* the "W" on the trees along the line "C" to E"?
A. Yes, sir.
Q. Did that slough have any water in it?
A. No, sir; except away down, good distance from this line marked "C," "D," "E."

146 Q. Could you tell where the ordinary high water mark is in that slough?

A. Yes, sir; we found what we supposed to be the line of the water marks in going up and down this line, about four feet East of the line marked "C," "D," "E" we discovered water marks on the small cypress.
Q. They are not the kind of cypress that grow out in the lake?
A. No, sir; very small green cypress, small but——
Q. So you are able to testify about where that slough goes to in ordinary stage of water?
A. Yes, sir.
Q. Does not quite reach that line?
A. No, sir.

On cross-examination he said:

Q. Montgomery, had you ever been up there before?
A. No, sir.
Q. Are you interested in any mineral filing at all?
A. No, sir.
Q. You did not know anything about the land, except what you saw and what was showed you by the defendants?
A. No, sir.
Q. You don't know whether you saw Williams' marks or not?
A. I was shown what was said to be Williams' marks, discovered four hacks on the trees and the "W" on the trees.
Q. You do not even know that Williams ran that line, except what you were told?
A. No, sir; nothing more than what was explained to me.

147 Q. I do not suppose that you have a technical knowledge of surveying?

A. No, sir; I do not know anything about surveying.
Q. Do you see anything on that map to indicate that Williams actually ran the quarter section line through there?
A. I could not say.
Q. Is there anything to indicate that he ran it?
A. No, sir.
Q. You say that you saw four hacks on the trees?
A. Yes, sir.
Q. And a "W" on the trees?
A. Yes, sir.
Q. On the quarter section line?

A. Yes, sir; the line running North and South?
Q. Did you notice how old the hacks were, or anything, did they look old or new?
A. Some were new hacks.
Q. Were the "W's" new or old?
A. New, comparatively.
Q. How old would you say that they were, or do you know enough about it to estimate the length of time that the hacks had been made?
A. Well, some of the hacks along that line appeared, or we would suppose, were made a year ago, or hardly a year old.
Q. And the "W?"
A. It seemed that they were put there more recently.
Q. About how long ago would you say they had been put there?
A. I could not tell exactly.
Q. Been put there within the last month or so?
A. Could not tell about that.
148 Q. Pretty newly made "W?"
A. Yes, sir; some of them.
Q. You were not shown any "W's" made by Williams made on that line surveyed, pointed out as made by him?
A. Only at the corner.
Q. On the line running from where?
A. From point "C," where it is marked "C" on the map.
Q. Where the "C" is marked on the map?
A. Yes, sir.
Q. Did you find any along the line marked "C," "D" and "E?"
A. Nothing but the four hacks.
Q. How far did those extend?
A. The hacks began near the cross section, and several trees hacked, probably twelve.
Q. Hacked along south of that?
A. Yes, sir; for a little distance, but after getting lower down only found an opening, did not find any hacks.
Q. Find any hacks between that opening and the corner "C?"
A. No, sir.
Q. Find any "W's" along there?
A. No, sir.
Q. Where were the "W's" at the corner on the trees?
A. At point marked "C."
Q. The "W" was at the corner marked "C" on this map?
A. Yes, sir.

149 *Testimony of W. E. Martin.*

W. E. MARTIN, witness for defendant, being first duly sworn, testified as follows:
On direct examination he said:

Q. Mr. Martin, you are a registered Civil Engineer?
A. Yes, sir.
Q. You have been practicing in this parish how long?

A. I came here originally in 1896, and have been actually in the practice here for six or seven years.

Q. Were you up on what is known as the Hanszen mineral filing last Friday?

A. Yes, sir.

Q. With Mr. Barnes?

A. Yes, sir.

Q. Did you find on the ground there the line "C," "D," "E," as run by Mr. Williams?

A. Yes, sir; walked along there.

Q. How did you identify that?

A. There were four hacks along the line, and the South end was a marked corner, a tree with a "W" on it, cut in it.

Q. A "W" cut into the tree with an ax?

A. Yes, sir.

Q. Was that Williams' mark?

A. Yes, sir; that is what I understood to be Mr. Williams' marks.

Q. Did you go around the eighty-seven acres generally?

A. Yes, sir.

150 Q. Now, with reference to the point "L," can you state how far that was from the water?

A. Point "L" is something like forty feet from the water.

Q. That is from the present stage of the water?

A. Yes, sir.

Q. Can you tell how far it was from the water, by the Williams map?

(Witness scales map.)

A. It is about two and a half chains.

Q. And it is actually only forty feet from the water line?

A. Yes, sir; from the water as it was when we were up there.

Q. Did you go along the border of Cotton Shed Arm?

A. Yes, sir.

Q. Do you know what is known as Cotton Shed Arm?

A. Only from what I have heard in the last few days. I do not know what it was called prior to that time.

Q. Now with reference to this map of Williams and Hoffer, which has been filed in evidence and marked Exhibit "H," that shows that Cotton Shed Arm divides in two branches, one running Southeast and one Southwest, can you state whether both or one of Cotton Shed Arm that drains, or are they drains that run into Cotton Shed?

Same objection as heretofore.

Same ruling and bill of exceptions reserved.

A. The Southwest appears as the arm of the — that is the greater arm, which leads in from the Southeast. There is a branch that is about the west line of Section Nine that runs South

151 through the center of the East half of Section Nine that comes in just East of the Williams corner that we spoke of, and runs just East of it for a way and empties into the other arm,

the way it shows, until it gets up to the upper end of this, and it is East of what it shows on this map.

Q. Is this similar to the other drains or sloughs that run into the lake?

A. Yes, sir; somewhat.

Q. Now Mr. Martin, with reference to points "G" and "H," are they actually located on the ground East or West of the Williams line, which is marked "C," "D" and "E?"

A. I did not see that, could not tell you.

Q. You say that drain ran in East of the line?

A. Yes, sir; it is near the actual center of the branch.

Q. It is East of the line marked "C," "D" and "E?"

A. Yes, sir.

Q. Along about that point what kind of vegetation is there on that branch?

A. Along in there at that point, from the corner marked "W," that is right at the edge of the hill growth, oak, hickory and other timber that grows in the hill.

Q. Now just East of this depression?

A. Cypress.

Q. Small green cypress?

A. Yes, sir.

On cross-examination he said:

Q. Mr. Martin, do you know where Green's mineral entry is?

A. Yes, sir; on the ground.

Q. Was this corner marked "W" at the corner there, inside of or outside of that mineral claim?

A. It is outside?

152 Q. West?

A. Yes, sir; the West line, about the Northwest corner of that fence.

Q. Was the Williams line, just above the line of the Green claim?

A. Just outside, I think, of the fence.

Q. You did not see—did you or did you not see his mark "W" up at the quarter corner, a quarter of a mile North of that?

A. No, sir; I did not go there. I did not go North only along where this depression is.

Q. You noticed his mark "W" at the quarter corner, at a tree No. 12?

A. I did not go that far North on the line.

Q. You did not take a photograph near there?

A. I was not with them then.

Q. You were not with them when they took the last photographs?

A. No, sir; not with them when they took any of them.

Q. You say that you saw some of Williams' marks South, of what appeared to be an arm of Cotton Shed, on that map?

A. Yes, sir.

Q. Between points marked "C" and "D?"

A. Between "C" and "D," right at the corner.

Q. What were the marks "W" on?
A. On a tree.
Q. Where?
A. At the corner of the fence that we are speaking of. I notice 1.32 down North of point "C," it was at the corner of this fence.
Q. You saw his mark?
A. Yes, sir; "W" on a tree at the corner of that fence.
153 Q. At the Northwest corner of the Green mineral claim?
A. Yes, sir.
Q. Did you see Williams' stake there at the corner, he established, is that the quarter corner?
A. I do not know that I took particular notice of a stake, I saw these marks there.
Q. Did you see any other trees around there with "W" marked on them?
A. North of that there were some trees with four hacks on them, on this line.
Q. How far up the line did you go, towards the North, that you found trees with the four hacks on them?
A. Probably three to five hundred feet. I did not measure it.
Q. Did you see any trees with four hacks on them North of the Cotton Shed Arm as delineated on that map?
A. Along in the edge of it on small cypress.
Q. Near point marked "E" on there?
A. I do not know where that point is on the ground, I am only giving it to you as in the cypress. This don't seem to appear to me as the conditions showed on the ground, the map.
Q. You don't know that that was the line established by Williams at all?
A. Only as his marks?
Q. Four hacks?
A. Yes, sir; and the "W" at the corner.
Q. You do not know who ran that line?
A. No, sir; only just from the physical evidence on the trees.
Q. Did you see any hacks North of point marked "E" on the other side of that depression?
154 A. I did not go further North than this line.
Q. Which line?
A. Point "E."
Q. Mr. Martin, the tree that you think was marked "W," would have been marked as a corner or as a bearing tree, indicating the corner?
A. As a bearing tree indicating the corner.
Q. The corner may have been North, East or West of that?
A. The corner was a little Northeast of the tree according to the way it was hacked?
Q. Northeast?
A. Yes, sir; that tree was hacked so as to show the corner Northeast, and the Northeast side of the tree had the "W" and it would indicate that the corner would be Northeast of this tree, but how far from it I could not tell.

Q. So that would not indicate the exact line?
A. Not exactly, it indicates that the corner is near it.
Q. The line coming South through the edge of these small cypress?
A. Yes, sir; the line coming South through the edge of these small cypress there run right down, run in just East of that tree which would indicate that this tree was only a short distance Northeast of the line, as I understand it.
Q. All you know about the conditions that existed, is what you saw on the ground the other day?
A. Yes, sir. I have been over the place frequently, but not in detail.
Q. You said awhile ago—you referred, when you said the slough was East of that line, you meant the center of the slough?
155 A. The edge of the cypress trees at this corner was just East, and of course the center of the slough would be somewhat further East. I could not tell the exact distance.
Q. You do not know exactly where the quarter line is, as was established by Williams, and therefore could not tell absolutely whether the slough would be east of that line or not?
A. Could tell only from this line I was on.
Q. And you don't know anything about that line except what you have stated?
A. No, sir.
Q. Can you tell how old the hacks seemed to be?
A. They were fresh. I could not tell their age, but I suppose within a year or so, but that would be a guess.
Q. About the "W" marked on the tree, can you state how old that was?
A. No, sir.
Q. Was it fresh?
A. Yes, sir; it was fresh.
Q. The trees, the line running from the trees, were to the West of the fence line on the ground, that is, the trees with the marks on them and the line running towards the North, from this tree with the "W" marked on it?
A. I did not run any line, I was merely along the line as there.
Q. Were they West of the fence line?
A. About with the fence line.

On redirect examination he said:

Q. Mr. Martin, you have examined Barnes' map No. 12, the contour map?
A. Yes, sir.
156 Q. You had a blue print the other day?
A. Yes, sir; I suppose so, I had one.

(Counsel shows witness Exhibit No. 2.)

A. Yes, sir; I believe that it was a blue print of this.
Q. Is the elevation shown there about correct?
A. As near as I could tell just by walking over it without an

instrument. Of course I did not go over it in detail, did not — any instrument.

Q. It shows generally the contour of the ground?

A. Yes, sir.

On recross-examination he said:

Q. Mr. Martin, look at this contour map made by Mr. Moore? (Shows witness map.) Q. Would you say that these contour lines are wrong?

A. I could not positively say that they are wrong, because I have taken no elevation of it, but they appear too far West at the Southwest end of this arm of the lake. In other words, they appear much too far West for this eighth section line "C," "D," "E." The center of that stream as it appears on the ground is East of that line clear up about the point "C."

Q. Mr. Martin, you have never made any measurement to ascertain where that quarter section line is?

A. No, sir.

Q. You made this according to what you have been shown by Barnes and others when there with you?

A. Yes, sir; this line shown me on the ground, the line marked "C," "D" and "E" is the line that has a "W" marked on it and has four hacks?

Q. You have no way of knowing whether that is the quarter section line run by Mr. Williams, or anyone else?

157 A. I could not tell anything more than it had the mark "W" and the four hacks on the trees.

Q. Is there anything on that map to indicate that he ran that line at all?

A. I do not know that the map would indicate it.

Q. In other words is there any circumstance to show, on the map, or anything else to show that he ran the quarter section line North and across that slough?

A. I do not know of anything on the map to indicate it. He may have marked it there without running it.

Q. Would you say the general outline of that contour was correct or incorrect?

A. It seems to me, from observation on the ground that it is too far West.

Q. I mean the general run of the lines, of this contour map?

A. I could not tell anything about it, except from the appearance of the ground.

Q. With references to the slough, disregarding the quarter section, do the contour lines look right?

A. The only point I could refer to to give any opinion is that quarter section line.

Q. You do not know *whether* the slough, or the conditions around that slough?

A. I know that it is East of that line as it appears on the ground.

Q. Disregarding that line, the contour, practically so, that slough has the elevation?

A. I have not checked that.

Q. You said that Barnes' contour map looked approximately correct?

A. This looks as though it was too far West.

Q. Can you not say that it is approximately correct?

158 A. The only thing that I can make a statement,—of course this contour, I cannot state whether it looks right, only from this line that I spoke of.

Q. Yes, you can, you know that there is a depression in there?

A. Yes, sir; there is a depression in there, but the depression as I understand it lays East of that.

Q. I am talking about the condition of that slough, if the quarter section line was not there?

By the COURT:

Q. Mr. Martin, you have reference to the location on the ground, and Mr. Looney has reference to the shape, without regard to that quarter section line, just consider the shape, the outline?

A. Well, it appears to me that this point in here, where this arm of this lake is West of the line "C," "D" and "E," is West, I cannot tell—you take the contour, this contour, it may appear as something like it is on the ground, but I cannot answer the question without stating that it appears too far West.

By the COURT:

Q. Mr. Martin, you are locating the body of the land with reference to the line and Mr. Looney is inquiring as to the shape of the ground, without reference to the location?

A. You take it in that way, the shape of the ground has something to do with the contour, they are governed by the shape of the ground.

Q. You are mixing it up with the location of that section line, he has no reference to that. You stated that Mr. Barnes' contour map looked approximately correct?

A. I was taking it as seen on the ground with reference to these fixed points.

159 Q. You did not take any elevations?

A. No, sir.

Q. You do not know anything about the high water in other periods of the year?

A. No, sir; I took no elevations.

Q. Leaving out the section line is there any very marked difference between that contour map and Mr. Barnes'?

A. Well, apparently, one is West of the other.

Q. I should think if you are a surveyor and know how to run a contour line and understood the difference between a contour line and another line running East and West you could answer the question?

By the COURT:

Q. Leaving out the location, that is not what he wants; he is asking about the contour, not the location? If you cannot answer the question say so, that will satisfy me?

A. I cannot answer it, I will state, without an explanation. It does not seem to me it is hardly right, hardly the right thing to do, without an explanation, as I have attempted to do.

Q. Truth of the matter is you do not know anything about that?

A. I have been over this ground and have observed it, only in passing over it.

On redirect examination he said:

Q. Mr. Martin, what do you understand by the contour?

A. It shows the elevation, that is carrying it around the hills and hollows, wherever they go, all lines are run on the same elevation.

160 Q. Does that denote the elevation?

A. It denotes the elevation. In other words, go a mile from a point and it would be the same elevation that you started from, no matter how crooked or anything else.

Q. There is nothing on the map that you have before you, map "H;" do you find any data on there by which you can check the relative elevation of the slough and the hills?

A. A man would have to be on the ground to check either one.

Q. Mr. Barnes' map is a regular contour map?

A. It has that appearance.

By the COURT:

Q. Something that will show the elevation of the land?

A. Yes, sir.

161 *Testimony of J. C. Stafford.*

J. C. STAFFORD, witness for defendant, being first duly sworn, testified as follows:

On direct examination he said:

Q. Mr. Stafford, where do you live?

A. I live at Mooringsport.

Q. How long have you lived in this parish?

A. I have been here close to fourteen years.

Q. Did you ever live on the property known as Wilson's Point that belonged to Mr. Noel?

A. Yes, sir.

Q. You were a tenant of his on that place?

A. No, sir; not a tenant; I was just living there. I got permission to build a house. I did not know whether I was building on his land or not, but before I built I went to him and wanted to know if I would build, would he care and he said no.

Q. How long did you live there?

A. Four years.

Q. What was known as Wilson's Point?

Objected to by counsel for defendant in so far as it goes to contradict the United States survey.

Admitted subject to the objection.

To which ruling of the Court counsel for plaintiff excepts and asks that this note stand in lieu of formal bill of exceptions.

A. What I always knew as Wilson's Point was down South of where I lived, half a mile or three-quarters of a mile, what was called as the Teat place, that was what it was called there. Where I lived was always known, ever since I have — there, as the Plum Point place.

162 Q. Where was your house?

A. My house was in Section Four.

Q. What lot?

A. I do not know the difference between the two lots, one and two lots, I was in the west lot of the two lots.

Q. Do you know where the Hanszen mineral claim is?

A. Yes, sir.

Q. East of the meander line?

A. Yes, sir; east of where I was.

Q. Was that property always known as that point?

A. That point was known as Briar Point.

Q. Where did it get this name from?

A. I could not tell about that. I do not know.

Q. Are there lots of briars around there?

A. Yes, sir; heap of briars there.

Q. Do you know what is known as Cotton Shed Arm?

A. Yes, sir.

Q. Which side of the property does it lay on, of the mineral claim?

A. On the East side, it is on the North and East of the mineral claim.

(Shows witness map, Exhibit No. 2.)

Q. State if that represents about the way that Cotton Shed Arm runs?

A. I do not know that I can tell from the map.

Q. You cannot tell much about the map?

A. No, sir.

Q. It was North and East of the mineral filing?

A. Yes, sir.

Q. Do you know the drain or slough that runs down through the mineral claim to Cotton Shed arm?

163 A. There is a little arm that makes out from Cotton Shed to that mineral claim, and goes up in it a piece.

Q. Do you know of any slough or water course that runs down into that from the South?

A. Yes, sir; there is a little branch that runs down there, runs from the South down into the mineral claim, out of Section Nine.

Q. Into Section Four and into Cotton Shed Arm?

A. Yes, sir.

Q. What is that branch known as?

A. I have heard it called several different names, heard it called the Vaughn branch and Teat branch, and heard it called the Carnes branch, Carnes bought the place from Teat.

Q. Known as Hog Thief branch?
A. Yes, sir; I believe that I have heard that, too.

By the COURT:

Q. That was not a popular name for it?
A. No, sir.
Q. It is well enough known as a branch to have a name?
A. Yes, sir.
Q. During high water does Cotton Shed back up into that branch?
A. Yes, sir; it back- up in there.
Q. How far does that branch extend South?
A. It don't run, that branch I do not suppose runs over three-quarters of a mile. The way that it winds around it may be longer than that. It is very short.
Q. It carries rain water from the hills to the lake?
A. Yes, sir.

164 On cross-examination he said:

Q. You have only been there four years?
A. I have been there longer than that, at least been on the lake longer than that; I lived in that house on the point about four years.
Q. All those names that you give to this place, they are local names?
A. Yes, sir; just heard the point called Briar Point and Plum Point. I have known it for a long time, for about fourteen years and it has been called Plum Point and Briar Point.
Q. Your house was actually within tthe survey of Mr. Williams?
A. Yes, sir.
Q. As the Government meander line?
A. Yes, sir.
Q. You do not know whether you were on the part known as Wilson Point?
A. No, sir; I do not know what they called it.

165 *Testimony of C. F. Davis.*

C. F. DAVIS, witness for defendant, being first duly sworn, testified as follows. On direct examination he said:

Q. Where do you live?
A. In Ward Two, on Jeems Bayou, two miles from Oil City, on Caddo Lake.
Q. You live South of the land in dispute, Briar Point?
A. Yes, sir.
Q. Been living there for a good while?
A. Well, I have been there for seventeen years. I am not very familiar with it, it has been Briar Point and Plum Point ever since I have been there.
Q. You knew where Briar Point was all this time?
A. Yes, sir.

Q. Everyone knew Briar Point?
A. Yes, sir; been called that ever since I have been there. I do not know what it was called before I went there.
Q. You know where Cotton Shed Arm is?
A. Yes, sir.
Q. What side is Briar Point?
A. I would call it Northeast of Briar Point. The arm is North and lay- a little East or North I would think.
Q. Do you know of any drain or creek that runs down from the South into Cotton Shed Arm?
A. Yes, sir; there is.
166 Q. Through this mineral filing?
A. Yes, sir; there is a branch or slough or arm, or whatever you call it, that the back water runs up and the rain water runs down to the lake. It seems to be kind of a drain in rainy weather from the little hill there into the main channel, runs down in there and in high water the water backs up in there.
Q. What name is that branch known by?
A. I never heard any name for it. If I ever heard any name called for it, I do not remember it. If any name ever called for it, I never heard it.
Q. You have known of that branch existing there?
A. Yes, sir; it is an arm or branch of whatever you want to call it. I always called it Briar point arm or Cotton Shed, running out towards Wilson's Point from Cotton Shed.
Q. It starts South of the section line, down in the Vaughn field?
A. Yes, sir; between the Vaughn field and what was known as Briar Point.
Q. It carried water from there to the point?
A. Yes, sir; carried the water North, it runs North, it drains North or Northwest.

On cross-examination he said:

Q. Mr. Davis, from looking at the map, can you place yourself very well?
A. I am uneducated I may say.
Q. You have good eyes?
A. I just have half.
Q. You have good eyes for seeing things?
A. I just have one.

(Shows witness map "H.")

167 Q. Mr. Davis, you spoke of the Vaughn property, where was it?
A. It was in Section Nine and I suppose it was in the Northeast quarter of Northeast quarter of Section Nine.
Q. On Section Nine.
A. Yes, sir.
Q. That is the piece of land that the Gulf Refining Company got from the Levee Board and put up a derrick on?
A. Yes, sir.

Q. Mr. Green has a mineral claim just North of that?
A. Yes, sir.
Q. Derrick up on that?
A. Yes, sir.
Q. Now, if this is Mr. Green's mineral claim as shown between the lines on this map in red and yellow, then look up North of that, you see Cotton Shed Arm, running from this Northeast point of Briar Point down towards the Southeast?
A. I consider that it runs from the Northwest part of the upper end of what I call the Northwest corner of the arm.
Q. To the Northeast point of Briar Point, that is the Northwest corner.
A. Northwest corner of Briar Point.
Q. Northeast corner?
A. Possibly I do not understand it, but there are lines on the line between Sections Nine and Four, and it borders me and from the Northwest corner of Sections Nine and Ten and Cotton Shed Arm come on down——
Q. Now here is the Northeast corner of Sections Nine and Ten?
168 A. I don't understand the map. Cotton Shed Arm comes around Plum Point, out here in Section Four clear around to the corner of Sections Nine and Ten, and comes back to my land in Section Ten, and this arm runs down to the corner of Sections Ten, Three and Nine, the arm comes within a quarter of it.
Q. Now over on this side, what you call this arm, the arm on the left hand side marked Cotton Shed, with the word "Cotton" in it?

(Showing witness map "H.")

A. I always called the whole arm Cotton Shed Arm. That is what I would call it, Cotton Shed Arm.
Q. You called that Cotton Shed Arm?
A. Yes, sir. There is a branch or slough that comes in there.
Q. Have you ever been down around in that part of the country running out around Briar Point, west of Green?
A. Yes, sir; me and Ben Isles stole hogs all over there.
Q. Did the water come in at ordinary stage of water, over here on what is shown to be the West side of Cotton Shed Arm?
A. In low water stages it is not over there.
Q. In ordinary high water?
A. In ordinary high water it is up to what we call over the beach.
Q. Up over the beach?
A. Yes, sir; and strikes the timber and when the water would go down it leaves a kind of beach, young growth grows up there, and has grown up there since.
Q. In ordinary stages of water it is up over the beach?
A. Yes, sir.
169 Q. Up towards where the high growth is?
A. Yes, sir.

On redirect examination he said:

Q. Where does Cotton Shed Arm begin? (Shows witness map, Exhibit "H?")
A. I don't understand the map.
Q. You cannot tell from the map?
A. No, sir; where I always considered it started from is from the mouth there, close to where this well is drilled, the Pure Oil Company well.
Q. Where does it run to?
A. Back up to about Section Three, starts in Section Four and about the middle of Section Four and runs back, makes a curve and comes back close to where Sections Ten, Three and Nine corner in the Northwest corner of Sections Nine, Ten and Three.
Q. Right back of Mrs. Perry's?
A. Yes, sir; in high water.
Q. Comes up to her field?
A. Right back of her fence.

170 *Testimony of B. F. Teat.*

B. F. TEAT, witness for defendant, being first duly sworn, testified as follows. On direct examination he said:

Q. You are an old resident of this Parish?
A. I have been here for some time.
Q. You live at Vivian now?
A. Yes, sir; now I do.
Q. You are the Justice of the Peace in Vivian?
A. No, sir; not now, I used to be.
Q. Did you ever live on the property known as the Wilson Point place?
A. Yes, sir.
Q. Have you recently been over the land located by Miss Hanszen and others?
A. Yes, sir.
Q. What was that point known as?
A. Which one you have reference to?
Q. Where the mineral claim is located?
A. On Briar point, right Northwest of Cotton Shed Arm.
Q. That is Briar Point?
A. Yes, sir.
Q. Can you tell how Briar Point got its name?
A. Because of the briars there I guess, nothing else that I know of.
Q. The whole territory was full of briars?
A. Yes, sir.
Q. Was that ever considered a part of Wilson Point?

171 Objected to by counsel for plaintiff on the ground, 1st. That we were not to go into this question of possession. 2nd. It is a question of law for the Court to determine whether it is part of Wilson's Point property which is the name of the property

in this suit, and the mere fact that it was known or not known as Wilson's Point is purely irrelevant.

Objection overruled by the Court.

To which ruling of the Court counsel for plaintiff excepts and asks that this note stand in lieu of formal bill of exceptions.

A. No, sir.

Q. Briar Point was never considered any part of Wilson's Point?

A. No, sir.

Q. How long did you live there?

A. Nine years. I moved there in 1892, in the early part of the year and left there in 1900.

Q. Do you know anything of a branch, running from Section Nine into this mineral claim?

A. Yes, sir; there is a branch in there, running in there where I used to live that carries the water from there into Cotton Shed Arm.

Q. What direction does it run?

A. North or Northwest.

Q. Northeast?

A. Northwest, if I have the matter down as I think.

Q. It runs into Cotton Shed Arm?

A. Yes, sir; might be Northeast. It runs out some distance above the mouth of the arm.

Q. Has that branch any name?

A. I do not know of any. I never knew of its having a name.

172 On cross-examination he said:

Q. Mr. Teat, you know where the ordinary high water stage is for Briar Point?

A. I think so.

Q. Examine this map?

A. I cannot tell anything about these maps.

Q. You can tell this judge?

A. I do not know whether I can or not. I am no surveyor. I cannot tell anything about this map. This is marked Cotton Shed Arm running out on the East, Easterly direction, is my impression of the matter.

Q. Does it back up West?

A. No, sir.

Q. Does it back up into the land known as Briar Point?

A. The Cotton Shed Arm makes out from Briar Point?

Q. Is this arm of water back in here, running into Briar Point? (Pointing to map.)

A. I see that it is marked Cotton Shed Arm.

Q. I do not care what is Cotton Shed, does it show water in there?

A. Of course the water goes in there.

Q. At the ordinary stage of high water?

A. Yes, sir; and a right smart otherwise.

Q. Ordinary stage of high water, the water goes into this part marked "Cotton" on the map?

A. Yes, sir.

Q. Does it go very far up there?
A. If not too low it does.
Q. At ordinary stage of water?
A. Yes, sir; Cotton Shed runs up there at least half a mile in a Northeasterly direction.

173 On redirect examination he said:

Q. Is that the natural drain from the hills?
A. Yes, sir; where I lived it was a natural drain running Northwest and Cotton Shed brings it in from the East.

Testimony of M. G. Angel.

M. G. ANGEL, witness for defendant, being first duly sworn, testified as follows. On direct examination he said:
Q. Mr. Angel, you have lived up in that neighborhood of this land in controversy for a good many years?
A. Yes, sir.
Q. About how many years?
A. All told about thirteen years. I came there about fifteen years ago, but I was away two years.
Q. You know where this land is located?
A. Yes, sir.
Q. What was that property generally known as, where the mineral location is?
A. Commonly known, a portion of it, as Briar Point.
Q. It is a point?
A. Yes, sir.
Q. You know where Cotton Shed Arm is?
A. Yes, sir.
Q. Does that join this claim on any side?
A. Yes, sir; on the Northeast.

174 Q. You know the drain or slough, or branch that runs from the South through this mineral filing into Cotton Shed Arm?
A. Yes, sir.
Q. About where does that start?
A. There are several drains running into Cotton Shed, one on the South and one farther West of Section Nine and crosses the line, it runs across the section line into Section Four, probably a quarter mile West of the section line.
Q. It runs into Section Four?
A. Yes, sir; probably a quarter of a mile West of the Southwest corner of Three, probably a quarter of a mile.
Q. Then runs up to Cotton Shed Arm?
A. Yes, sir.
Q. Has that drain a name?
A. Possibly, I have heard it called hog pen branch and other names. Commonly known as Hog pen, that is the name I have known it by.
Q. Is that a natural drain from the hills into Cotton Shed Arm?

A. Yes, sir.

Q. I suppose in High water that the water from Cotton Shed backs into it?

A. Yes, sir, in extreme high water, I do not know that I have ever been on the branch in extreme high water, and don't know how far it would back up.

Q. There are a great many of these branches running into the lake at different points, up there on that point?

A. Yes, sir, there are four that drain into Cotton Shed.

175 Q. As you go along other parts of Jeems Bayou you find the same kind of branches?

A. Yes, sir.

Q. The country drains into the lake?

A. Yes, sir.

Q. And into which the lake backs in high water?

A. Yes, sir.

On cross-examination he said:

Q. Mr. Angel, I will get you to look at this map, at the ordinary stage of high water in Cotton Shed arm, would the water—would there be any water in this Arm of Cotton Shed marked with the word "Cotton, there is the Green Mineral Claim, that is Vaughn's. The stage of the water, that would be occasioned by the rise that starts in December and leaves about the first of June or July?

A. From my knowledge of that water there would probably be a rise there, of fifteen feet above what it is now.

Q. You have known the water to go that high?

A. Yes, sir.

Q. But the average stage of the water?

A. I have seen the water lower than it is now, now on an ordinary stage of water, what do you mean in the Summer? You say ordinary stage, I do not know what you mean by that?

Q. Well I mean by that——

A. What I would consider the lake shore there, there is some small growth of cypress and beach?

Q. You would consider that the lake shore?

A. Yes, sir, that divides the woods from the lake.

Q. That would be covered by ordinary stage of high water?

A. Yes, sir.

176 Q. Would go back up towards the hard wood timber growth?

A. Yes, sir.

Q. You noticed that grass in there?

A. Yes, sir.

Q. Would it cover that grass?

A. Yes, sir, the grass line is between the small growth of cypress and the water.

(Counsel shows witness map "H.")

Q. This Arm of Cotton Shed, that has the word "Cotton" in it, does the water cover that at ordinary stage of water?

A. That seems to be right, only this arm here, it appears to me should run further to the East. I think that is the quarter section line, it crosses this arm, to the East rather than to the west. The old lines run in here his corner was west of this drain.

Q. The old lines?

A. Yes, sir.

Q. Who ran those lines?

A. I do not know who ran them, I was not there when they were run.

Q. You do not know whose lines they were?

A. No, sir, I do not.

Q. Do you know where Mr. Green's fence is?

A. Yes, sir.

Q. The Arm would run on the west side of Green's fence?

A. No, sir, the arm would run on the East side of Green's fence.

Q. This line, does it go down as far as the fence, in ordinary state of water?

A. If you accept what I consider the lake shore, it is not within three hundred feet of it?

177 Q. The small cypress are at the ordinary stage of high water?

A. I do not know what you mean by the ordinary stage of high water, but what we accept as the lake shore, has small cypress fringing the lake, that is the dividing line between the water and the hard wood growth.

Q. That dividing line, would the water go up to that, up to those small cypress, at ordinary stage of the water?

A. Yes, sir, stand there the principal part of the winter.

Q. It goes up to the west side of the arm, like on the east?

A. No, sir, I do not think so. This corner here is to the west, the southwest quarter of southwest quarter, (Pointing to "C" on map) that is west of the drain.

Q. You do not mean corner "C" established by J. M. Williams, but the old survey?

A. I do not know who it was established by, but there was an old corner established there, also the Green claim runs west of the Beach.

Q. How far west?

A. Possibly one hundred feet, not over fifty feet, may be more than that.

Q. West of the branch when you get down to the Green Mineral claim?

A. Yes, sir.

Q. How does that branch run up into this claim, curve any?

A. Nearly due North, possibly bears a little to the East.

Q. Either North or a little to the East?

A. Yes, sir.

178 Q. The high water, ordinary stage, the stage during the winter months will not go down there?

A. It will not stand there. I have seen water all over it, but ordinarily it would not stand there.

Q. Have you been up in here since these surveys were made by Mr. Williams?

A. Yes, sir. I was not there when Williams was surveying in there and what particular part he surveyed I do not know.

Q. When he surveyed around the point?

A. I do not know when he surveyed that.

Q. Now Mr. Angel you say that this corner should be placed further to the West?

A. No, sir, I did not. I said that this corner was west of the drain.

Q. If the corner was put West of the drain, that would affect other property up there?

A. I do not know whether it would or not. I do not know how it would effect other property, or not. I know there was an old corner established there west of the drain, and Green's mineral claim is west of the lowest depression of the drain, where it crosses the claim.

Q. But up six or eight chains North of that, you know how that is?

A. I should judge to the best of my knowledge it runs North or a little East of North, probably forty-five degrees, I do not know exactly.

Q. Mr. Angel you have an interest in some property known as the Russell property?

A. Yes, sir, that is my wife has.

Q. You have some mineral claims also?

A. Yes, sir.

179 On redirect examination he said:

Q. You stated that the line running North and South through section four, the quarter section line, is a little west of the Southeast corner of Section Four, is west of this drain?

A. Yes, sir, to the best of my knowledge, that is if I understand the corners located.

Q. As always known to you?

A. Yes, sir.

On recross-examination he said:

Q. Did you say how long you have been in there?

A. I came in there in 1895.

Q. 1895?

A. Yes, sir.

180 *Testimony of B. F. Lloyd.*

B. F. Loyd, witness for defendant being first duly sworn, testified as follows. On direct examination he said:

Q. Mr. Loyd, where do you live?

A. Shreveport.

Q. What business are you in?

A. I am in the lumber business.

Q. You are familiar with the different kinds of timber?
A. Yes, sir.
Q. Mr. Loyd, were you along with Mr. Mason, Miss Hanszen and others on what is known as the Hanszen Mineral claim, last Friday?
A. Yes, sir.
Q. Did you go over the ground generally?
A. Yes, sir.
Q. Did you notice the character of the vegetation?
A. Yes, sir.
Q. And what kind of trees were on it?
A. Yes, sir.
Q. What kind of trees?
A. Cypress trees, oak, red oak and white oak, post oak, pin oak.
Q. The kind of trees that grow in the hills?
A. Yes, sir.
Q. Did you go through a drain or slough as shown on this map marked Exhibit "H" as Cotton Shed Arm, and cutting into the mineral claim in a Southwesterly direction, that has the word "Cotton" on it?
A. Yes, sir.

(Shows witness map.)

181 Q. Did you follow the line that is marked "C," "D," "E," on this map?
A. Yes, sir.
Q. By what did you trace that line?
A. Some surveyor had blazed that out, some six or eight months before we were through there.
Q. What kind of marks?
A. Nothing but three or four hacks, little fresh bark cut away.
Q. As whose line was that pointed out to you?
A. I think that they said it was the William line, that Williams ran it as the quarter section line there.
Q. Does that slough or drain cross that line?
A. No, sir.
Q. On which side of the line is it located?
A. The quarter section line is west of that Arm there.
Q. What kind of growth is up towards the head of what is shown as the arm?
A. Small live green cypress.
Q. Is that the kind of cypress that grow in the lake, or in Cotton Shed Arm proper?
A. No, sir.
Q. What kind grows out in the lake of Cotton Shed Arm?
A. Those that are out there, that are alive are the swell but cypress, and these here tapered to the ground, where the water does not effect them. They are the same size to the ground.
Q. Do you ever find that kind of cypress, the big but cypress growing in the hills?
A. No, sir.

Q. These small green cypress, do you find them growing in the hills?

182 A. No, sir, but they grow out in the edge, in damp places. They don't grow in the water.

Q. These small green cypress grow where the water don't stand?

A. Yes, sir.

Q. The large cypress grow out in this arm, down to the North and East?

A. Yes, sir, large, swell, but cypress.

Q. Do you find any trees out in the open lake?

A. No, sir, did not see any live trees there.

Q. Lot of dead stumps there?

A. Yes, sir.

Q. Now, Mr. Loyd, examine this Picture No. 11, Exhibit No. 13, and state if that shows the two different kinds of cypress that you refer to?

A. Not exactly, there is some very small, only cypress bushes, to the left.

Q. To your right hand as you go to the water?

A. Yes, sir.

Q. That shows the distinction between the two kind that you refer to?

A. Yes, sir.

Q. Would you say that this particular slough referred to was a drain from the hills?

A. I did not go to the head of this, we went to the fence corner, where the wire fence stops and it seemed to bear off towards the East.

Q. It is all East of that quarter section line?

A. Yes, sir.

On cross-examination he said:

Q. Mr. Loyd, you do not know anything about that quarter section line, as to who made it?

A. No, sir.

183 Q. Or who made the hacks?

A. No, sir, not of my own personal knowledge.

Q. You saw the hacks on the trees?

A. Yes, sir.

Q. Some places three and others four?

A. Yes, sir.

Q. You do not know where the quarter section line is?

A. No, sir, not of my own knowledge.

Q. You don't know that any surveyor ever run it?

A. No, sir, not of my own knowledge.

Q. How many times were you up there?

A. That was the first time I was there?

Q. When was that?

A. Last Friday.

Q. You could not tell anything about the condition of that ground at ordinary stage of the water?

A. I could tell how high the water would get by the marks on the trees.

Q. You could not tell though, how high the average stage of the water was?

A. No, sir, tell by the growth or vegetation. That is you could for this year, how high the water, it showed how far the grass had been killed out by the water.

Q. This year?

A. Yes, sir.

Q. Don't the grass grow up where the water is part of the year?

A. Don't seem to have up there.

Q. You did not notice any grass behind—back of the big cypress trees?

A. No, sir, the grass is out in the edge.

Q. You did not notice any back of the cypress?

A. No, sir, where the water receded, there is probably a space of ten or fifteen feet with slight vegetation there.

184 Q. No vegetation where the water ordinarily stands?

A. No, sir.

On redirect examination he said:

Q. Mr. Loyd, did you make an actual measurement with a tape line from the Northwest corner of the Southeast quarter of Southeast quarter of Section four to the water line?

A. Yes, sir, I carried the tape, I assisted some one. Mr. Mason or Mr. Montgomery.

Q. To what points did you all measure?

A. Went to the water line, then went back to the edge of the vegetation.

Q. At ordinary stage of the water?

A. Yes, sir.

Q. From what corner?

A. Near Large tree twelve, established by—I supposed to be the corner, I supposed established by Williams. I was told by Mr. Barnes and Mr. Mason that this was his line, that that hacked line was his.

Q. How far was it from that corner to the ordinary stage of high water?

A. I did not set that down. Some one else kept a memorandum of it, I did not.

Q. You measured it though?

A. Yes, sir.

Q. And called it out?

A. Yes, sir.

On recross-examination he said:

Q. Have any marks on it?

A. No, sir.

Q. Was it the quarter section corner?

A. The corner was indicated by a stake in the ground fifteen or twenty feet from there.

185 Q. Was that stake easily discoverable?
A. Yes, sir, it was about two feet high.
Q. Was not any marks on that tree?
A. No, sir.
Q. No. "W" on that tree?
A. No, sir.
Q. Did you notice any hacks going to that tree?
A. No, sir.
Q. Any North of it?
A. No, sir, but the line was hacked.
Q. What were they?
A. Just took a hatchet and hit a tree two, three or four times.
Q. Different hacks, not all the same?
A. I do not think they were all the same, one was a tree cut half way into.
Q. How long did that seem to have been done?
A. Seemed new.
Q. About how long?
A. Probably six months ago.
Q. There was not anything on that quarter section line to show, any "W" or anything like that?
A. No, sir.

186 *H. E. Barnes Recalled.*

H. E. BARNES, witness for defendant being recalled, testified as follows. On direct examination he said:
Q. Mr. Barnes, you have heard the testimony of Mr. Loyd, Mr. Montgomery and Mr. Martin, about this line of Mr. Williams?
A. Yes, sir.
Q. You pointed the line out to them?
A. Yes, sir.
Q. Point it out on the map?
A. The line they call "C" "D" "E" on the map "H."
Q. How did you identify that line as being the Williams line?
A. This line was identified by four hacks, which was peculiar to Mr. Williams' lines, which he used all the time, and the "W" at the corner, at the South end of the line, which these parties saw the witness trees marked "W." The corner Mr. Loyd refers to the Quarter section, was not set by Williams, but on his line by my measurement from the Southwest corner. It was on his line but he did not set it as his corner.
Q. Who drove that stake?
A. I drove that stake.
Q. The North and South line was his line?
A. Yes, sir, and I took the measurement a quarter North to establish where that corner come on his line.
Q. Your North and South line, is one hundred and sixty-five feet further west than that?
A. Yes, sir, that is where I would run it.
187 Q. Mr. Barnes, taking the Plaintiff's Exhibit "H," have you ever figured the acreage in lots one and two respectively, of Section Four?

A. Yes, sir, today.

Q. What would they be?

A. These figures are based on the Government traverse line around lots one and two, making this traverse close? The traverse actually does not close. I make it close, giving lot No. 1 13.262-1000 of an acre and giving lot No. 2 12.051-1000 acres.

Q. Making the meander line close?

A. Yes, sir.

Q. They have the acreage you give?

A. Yes, sir.

A. Yes, sir, that is the correct calculation made by me today from the government calls.

Q. Mr. Barnes, you have in your hand Plaintiff's map, Exhibit "H"?

A. Yes, sir.

Q. For the assistance of the Court, will you testify as to the length of the line, of the line, being the west line of section four, the distance from the East and West section line, being Southwest section four, North to the Cotton Shed arm, as depicted on that map?

A. Shown as line marked "C" "D" on this map, by their scale, is practically nine chains from the section line North to what they call Cotton Shed.

Q. Now tell the Court the length of the line between sections three and four, the distance from the Southwest corner of section three, North along the section line to Cotton Shed arm according to that map?

A. According to their map it is twelve and a half chains, approximately.

188 Q. Will you tell the Court, approximately the area of Section Three, lying South of Cotton Shed Arm, as depicted on that map?

A. I would estimate that at something like twelve acres.

Q. Do the same as to Section Four, lying South of Cotton Shed arm?

A. I would say something like twenty-five acres.

Q. That is taking what they testify to as being a branch, as part of Cotton Shed?

A. Yes, sir, according to their map.

Q. According to their map, can you figure how much land is embraced within the Hanszen Mineral filing, lying North and West of the branch, which is depicted on map "H" as a branch of Cotton Shed Arm?

A. It looks like there might be about thirty-five acres. In the neighborhood of thirty-five acres.

Q. That is according to the map "H" made by Williams?

A. Yes, sir.

On cross-examination he said:

Q. Mr. Barnes, you say that you made this measurement from the Williams section corner of Sections Four and Nine, the Quarter Section, corners of Sections Four and Nine?

A. The eighth section corner.

Q. Twenty chains west to the corner of Sections Three, Four and Nine?

A. Yes, sir.

Q. You made the measurement North?

A. Yes, sir.

Q. How did you make that measurement?

A. With a chain, up Williams' line.

189 Q. Up what you call the Williams line?

A. Yes, sir.

Q. You put your stake there?

A. Yes, sir, twenty chains North of the place I began.

Q. Did you run that line along on the outside or on the inside of the fence that defines the Green Mineral claim?

A. It started in the Green Mineral claim.

Q. In the Green claim?

A. Yes, sir.

Q. Continued along the fence?

A. There is no fence running North and South. It could not be a continuation of any fence. There is no fence on the Green Mineral claim running North and South, except on the western boundary of his claim, but that fence is west of the Williams line, supposed to be parallel.

Q. How far from the Williams state?

A. One hundred and odd feet.

Q. Green is one hundred feet from the Williams stake?

A. Yes, sir.

Q. Now where is that tree that is marked "W"?

A. It is at the South corner of that line.

Q. How close is it to the stake that you took to be the Williams stake as the starting point?

A. I think that there are three trees marked there. Three trees right around that stake. I do not know exactly what kind of trees they are, but the witness trees marked "W," the tree referred to by Mr. Montgomery as being outside of and at the corner of the Green Mineral claim.

Q. Then it is East of the Northwest corner of the Green Mineral claim, inside of the Green claim?

190 A. Not what is fenced, it is not inside of that. It is East of his West line, right close to the North fence line of the Green claim and the South fence line of the Hanszen claim.

Q. Mr. Barnes did you notice where that stake was, the stake you ran from?

A. Yes, sir.

Q. Is it not in or near the slough?

A. It is a little west of the slough.

Q. It is not in the slough?

A. No, sir, the corner is west of the slough.

Q. The corner that you ran from?

A. Yes, sir, marked "W."

Q. You made that measurement yourself and fixed that stake yourself?

A. Yes, sir, some time ago.

Q. How long ago?

A. It was when I made that contour map, about a month ago.

Q. What is your hack?

A. Three hacks.

Q. Did you make any of these hacks on any of these trees?

A. No, sir, chained the line of Williams up the quarter to locate the forty corner.

Q. Did not Williams usually establish the quarter corners?

A. Yes, sir. I do not know why he did not establish this one.

Q. Do you know whether he made that survey through there at all?

A. I have followed Williams' lines in lote of places and I do not know of anyone else who uses four hacks and a "W" except Williams.

191 Q. You do not know whether he made that survey of that line or not?

A. I did not see him make that survey. I just concluded that he did do it, from the evidence that I found, the marked line and the marked tree at the corner.

Q. The stake you started from is not in the slough?

A. No, sir, not in the slough.

Testimony of C. F. Griggs.

C. F. Griggs, witness for defendant being first duly sworn, testified as follows:

On direct examination he said:

Q. Where do you live?

A. Live in Shreveport now. Lived up on the lake for the last two years.

Q. Where were you living six months prior to June?

A. On this property in dispute.

Q. On the Hanszen mineral claim?

A. Yes, sir.

Q. Have you been living there since, since what date?

A. Since April 4th, went there the evening of April 4th.

Q. April 4th, 1910?

A. Yes, sir.

Q. Are you familiar with the corners of the location?

A. Yes, sir.

192 Q. State to the Court whether the corners are all on high ground or all in the water?

A. All on high ground.

Q. Have you ever known, since you have been there, since April 4th, for any of these corners to be in the water?

A. No, sir, not the corners.

Q. The water was pretty high in the Spring?

A. Yes, sir, high when we made the location in April.

Q. Were you with Mr. Barnes when he originally run the lines to locate the claim?

A. Yes, sir, the first day.

Q. It was during high water?

A. Yes, sir.

Q. Did he endeavor to follow the line of the high water?

A. Yes, sir.

Q. You know the slough, drain or branch that runs up from Section Nine through the mineral location to Cotton Shed?

A. Yes, sir.

Q. Is that drain from the hills?

A. Yes, sir, and runs East into Cotton Shed arm.

Q. You know where the quarter section line — established by the Producers Oil Company through this location?

A. I know where they ran their line through there.

Q. You know where the lines is North and South? Did you see any part of that line run?

A. Yes, sir, the part run by Mr. Hoffer. Mr. Williams was there the day I was in town and the next day Mr. Hoffer come.

193 Q. Hoffer used Mr. Williams' hacks?

A. Yes, sir, used four hacks.

Q. Williams used four hacks and the "W"?

A. Yes, sir, and Hoffer used the same marks, I suppose that is all I saw.

Q. You know that Hoffer run the line from Williams' corner North?

A. Yes, sir.

Q. Is that line North and South, West or East of this slough?

A. It is West of it.

Q. What kind of cypress trees are in this slough?

A. Big cypress in this slough and on the sides little cypress.

Q. Big cypress at the mouth of it?

A. Yes, sir.

Q. As gets out into the slough, what kind?

A. Small and heavy underbrush.

Q. Green cypress?

A Yes, sir.

Q. Saplings and underbrush?

A. Yes, sir.

On cross-examination he said:

Q. Mr. Griggs, do you recall an occasion when I was there with Sharp, Eubanks and several others?

A. Yes, sir.

Q. After the mineral location was made?

A. Yes, sir.

Q. Do you recall that we went out and sat at a tree just North of the Vaughn property and the Green mineral claim?

A. Yes, sir.

194 Q. At the time, was there not water all around in what is marked Cotton Shed Arm here?

(Showing witness map.)

A. Well, there was some water back up in that slough there, high water.

Q. The water is much lower to-day than it was then?

A. Yes, sir.

Q. How many feet would you say?

A. I do not know, I suppose three feet, two or three feet.

Q. Now that water stayed about that stage for some time, about the stage it was when we were up there?

A. Well, it stayed that way until it began falling, probably two or three weeks after you were up there.

Q. At that time the fence on the Barnes mineral claim, the long fence was pretty much in the water, across the Cotton Shed arm?

A. Across Cotton Shed Arm it ran some in the water.

Q. Pretty much?

A. Was not so very much of it in the water. I suppose two hundred feet of it.

Q. Was not a quarter of a mile of it in the water?

A. No, sir, I do not think it was.

Q. The water was down considerably South of where that fence was?

A. Yes, sir, some water back in that arm.

Q. Now Mr. Griggs, do you remember your stating to me that you did not know that it run through the water when staking out that claim?

A. Yes, sir, I made that remark, that I did not see why they run across that arm, could not see what good that arm would be,
195 but I suppose that it was necessary to do it to take in the location where the lines run across there on the other side is that water and on this side is the land and done it to take in the claim.

Q. Did you ever see where Williams' stake was on the North line of Section Nine and the South line of Section Four, twenty chains West of the corner of Sections Three, Four, Ten and Nine?

A. I may have seen it, there is a stake there.

Q. Down in the Green mineral claim?

A. No, sir, not in the claim, above the location.

Q. Didn't he put a stake down in the Green location?

A. I think he did.

Q. Do you know whether that is in the slough?

A. No, sir; not exactly in the slough.

Q. Can you state positively it was not in the slough?

A. No, sir, I could not, I do not know positively.

Q. Were you there when Williams ran the water line?

A. No, sir, I was in Shreveport.

Q. Did you ever know, or hear of his running any line up through the quarter section there?

A. Yes, sir, I was told the next day, I noticed the hacks and I asked Mr. Belcher, wanted to know who cut through there.

Q. You do not know of your own knowledge?

A. No, sir, I know Williams—that is I know Belcher told me so——

Objected to by Counsel for Plaintiff as hearsay.
Objection sustained by the Court.
To which ruling of the Court, Counsel for defendant excepts and asks that this note stand, in lieu of formal bill of exceptions.

196 Q. A few days after that Mr. Hoffer went through there making four hacks?
A. Yes, sir, I know that he went through there, I went and asked what he was doing.
Q. He went through there?
A. Yes, sir.
Q. Do you know whether Williams ran the water line around that property?
A. I have seen some of his little stakes that he put through there.
Q. Where he run the line in the grass or edge of that part where the grass grows, between the dry part and the lake edge or the large timber?
A. Some grass there.

197 *Testimony of Sam. W. Mason.*

SAM. W. MASON, witness for defendant being first duly sworn, testified as follows:

On direct examination he said:

Q. Mr. Mason, you are one of the defendants in this case?
A. Yes, sir.
Q. You know the boundaries and limits of this mineral filing?
A. Yes, sir.
Q. You have been over it in high water?
A. Yes, sir, over it a few days after the location was made.
Q. Was that during a period of high water?
A. Yes, sir, the water was backed up in there.
Q. Were all of the different corners of this filing on high land?
A. Yes, sir, they were.
Q. Have you been there recently?
A. Yes, sir, I was up there a week ago last Sunday, and there last Friday.
Q. You have taken occasion to go up that slough designated by Mr. Hoffer as branch of Cotton Shed?
A. Yes, sir.
Q. What is that?
A. Well, it is just a small drain from the hills back there, and flattens out as it nears the lake. Where it crosses the section line between Sections Four and Nine, it is a well defined branch there and has small banks in there and the water is confined to a small area and spreads out as it gets further down towards the lake.

198 Q. Did you find a well marked line, hacked on the trees, as denoting the quarter section line running West from the Southeast corner of Section Four?

A. Yes, sir, a well marked line there.
Q. The trees marked?
A. Yes, sir, almost a road.
Q. What kind of marks?
A. Four hacks.
Q. Is this slough or drain west of that line?
A. It is east of the line, the drain as it flattens out in one place crosses it just a little bit.
Q. How far is Barnes' quarter section line West?
A. One hundred and sixty-five feet at the corner.
Q. What is the character of the vegetation growing in this slough?
A. There was grass where that line is through there, where that small portion of this slough crosses the line, is small scrubby cypress, very heavy growth.
Q. Cypress bushes?
A. Yes, sir.
Q. Green cypress?
A. Yes, sir.
Q. Not the kind of cypress that grow there in the lake, or in Cotton Shed Arm?
A. No, sir, nothing of that kind at all.
Q. In Cotton Shed arm there are the swell but- cypress?
A. Yes, sir, as known to me.
Q. Take out in the lake, has it any live cypress in it?
A. No, sir. Once in a while you will see some sprouts and dead stumps.
Q. This branch has these green cypress in it?
A. Yes, sir.
199 Q. When you get on the banks what kind of timber do you find?
A. Goes into the hill timber gradually, there is some pretty good size cypress, not a well defined mark between the low land and high land.
Q. You get into the hard wood?
A. Yes, sir, it breaks off very abruptly.
Q. What is the character of the land along the section line, dividing Sections Nine and Four?
A. Well, that is all high land. I went from the corner of Sections Three, Four, Nine and Ten East over that line and there was a little lowland at the beginning, in fact full of green cypress where that corner was and a growth of small wire grass that grows in wet places, but leaving that immediately follows a high ridge until you cross a branch running out of Section Nine into Section Four a quarter of a mile West of the Southeast corner of Section Four.
Q. Is it all high land along that line?
A. Yes, sir, that is high land.
Q. You say that the branch is East of the quarter section line?
A. Yes, sir.
Q. Mr. Mason, were you on this place, between the time of the location prior to the recent time?

A. Yes, sir, I have been up there three or four times.
Q. Were you there in July?
A. Yes, sir.
Q. With whom?
A. With yourself, Mr. Connie.
Q. Did you take any photographs then?
A. Yes, sir, seven or eight.
Q. Have you any of them with you?
A. Yes, sir, I have nine.

200 (Witness produces photographs.)

Q. Mr. Mason, where was picture No. 19 taken from?
A. This picture was taken about twenty-five feet east of where Barnes leaves the United States traverse line. It was about where the Williams line crosses the Barnes line, shows those trees there, two overcups oaks.

Counsel for Defendant offered picture referred to in evidence.
Filed in evidence and marked Exhibit No. 19.

Q. Where was picture Twenty taken from?
A. That was an oak tree that was cut down about one hundred and twenty-five feet Southwest of the derrick of the Pure Oil Company?
Q. That is near the extreme point?
A. Yes, sir.
Q. Did you count the number of rings on that tree?
A. Yes, sir, as near as I could make it out, we found one hundred and two rings, grown very close together near the heart of the tree and it was hard to count them all.

Counsel for Defendant offered picture in Evidence.
Filed in Evidence and marked Exhibit No. 20.

Q. This picture No. 21, what does that show?
A. This was the same tree taken from a different point as No. 20.

Counsel for defendant offers picture No. 21 in Evidence.
Filed in Evidence and marked Exhibit No. 21.

Q. Now picture No. 22, what does that show?
A. That was a picture of a stump fifty feet South of the derrick and we counted one hundred and four rings on that stump. The tree is ten feet six inches in circumference above the ground
201 and three feet and six inches thirty-four inches above the ground.
Q. That was away off at the extreme point?
A. Yes, sir, at the derrick?
Q. Oak stump?
A. Yes, sir.

Counsel for Defendant offers picture No. 22 in Evidence.
Filed in Evidence and marked Exhibit No. 22.

Q. Now picture No. 23, what does that represent?

A. That represents the kind of underbrush that had to be surveyed through in that country?
Q. In that country?
A. Yes, sir.
Q. Where was that taken?
A. That was taken East of what I know as Cotton Shed Arm and was looking towards the Ratcliff-Kendal mineral claim.

Counsel for defendant offers picture No. 23 in Evidence.
Filed in Evidence and marked Exhibit No. 23.

Q. Examine picture No. 24 and state where that was taken and what it shows?
A. That was taken a little Southeast of the camp, which is the extreme point of the land occupied by the mineral claim and is looking East towards Cotton Shed Arm.
Q. That shows the difference between the high land and low ground?
A. Yes, sir, it shows the small cypress growth in the bayou and the small trees between the cypress and the large hill timber.
Q. What are the principle large trees there?
A. That is oak.

202 Counsel for Defendant offers picture referred to in Evidence.
Filed in Evidence and marked Exhibit No. 24.

Q. Examine this picture No. 25 and state where it was taken and what it shows?
A. That was an Oak tree eleven feet in circumference fifty feet from the line just to the West of the Cotton Shed Arm, and it is entirely within the line of the mineral claim and at a point as shown on map Exhibit "H" as being the water.
Q. Shows the underbrush and broken, and briars?
A. Yes, sir.

Counsel for Defendant offers picture referred to in Evidence.
Filed in Evidence and marked Exhibit No. 25.

Q. Examine picture No. 26 and state from where that was taken?
A. That picture is taken from the starting point of the survey, which is the point twenty-four and a half chains West of the Southeast corner of section four, looking East towards the slough.
Q. And shows the kind of vegetation and underbrush?
A. Yes, sir.

Counsel for Defendant offered picture referred to in Evidence.
Filed in Evidence and marked Exhibit No. 26.

Q. These pictures were taken about the same time of the year that Bristol made his survey?
A. Yes, sir, taken in July.

203 On cross-examination he said:

Q. Mr. Mason when you referred to the quarter section line of twenty-four and a half chains west of the Southeast quarter of Four, you were speaking of the line established by Barnes?

A. I referred to that in this picture.

Q. So that point, taken from the starting point twenty-four and a half chains west of the Southeast quarter of Section Four would have been according to the Barnest survey about one hundred and sixty-five feet west of Williams'?

A. Yes, sir.

Q. Now, Mr. Mason, you spoke of picture twenty-five, being of tree three feet in circumstance twenty-five or fifty feet from the line just to the west of Shed Arm, shown at a point on map, Exhibit "H," as being in the water?

A. Yes, sir.

Q. Did you know, at the time that you were taking these pictures where the Williams line was?

A. Yes, sir, we had that blue print of the Williams survey showing the red line.

Q. Did you know where Williams' water line was on the ground?

A. I never paid any attention to Williams' line, I was going by the points on our line.

Q. How could you tell it was intended to be in the water, if you did not know where the Williams water line was?

A. I am referring to the position that Williams shows our line on his map, or Mr. Hoffer does.

Q. You do not know whether Williams put this tree inside of his water line or not?

A. I do not know about that.

204 Q. Did you try to find out where Williams' water line was there?

A. I did not follow it all around.

Q. At this point?

A. No, sir, at that point.

Q. Then why do you say this tree is shown in the water, if you do not know where Williams' water line was?

A. I mean that according to that red line on Exhibit "H" as being our line, shows it in the water, and this picture that I refer to was taken fifty west of our line, fifty feet west of where the line actually is on the ground, about the point marked No. 9 on Exhibit "H."

Q. Then you simply mean, that the line as shown by the Hoffer delineation of your mineral location, if they are correct the correct lines that they would throw you into the water?

A. I mean that our fence, as it is on the ground following the survey, is not in the water.

Q. Your fences is not in the water?

A. That the line of our survey is not in the water, neither is the fence in the water at that point.

Q. You say that tree was fifty feet from your line?

A. Yes, sir, fifty feet from our line.

Q. Take your scale there and see about what distance it is according to scale at the point "9" between the red line and the Williams water line?

A. Shows sixty-six feet, approximately a chain.

Q. If that is true, back fifty feet would be just about outside of that delineation, would be about sixteen feet off of your line, the red line, if you were fifty feet behind your fence and that red line is sixty-six feet in front of the Williams line, there would not be but sixteen feet difference there.

205 A. If I measured back fifty feet from the line shown in red it would still throw the tree sixteen feet East of the Williams line?

Q. Then there would not be but sixteen feet difference as delineated on your map between your line and this?

A. Well, I believe our fence——

Q. I am not talking about your fence, I am talking about your claim, your mineral location as shown by the calls of the survey?

A. You are asking me to say the Williams line is correct with reference to our line?

A. No, I am not. I am asking you on the ground there, if the mineral location is properly shown by Hoffer, not according to the fence you run, but by Hoffer—I am asking you if there is not about sixteen feet difference there, only?

A. Yes, sir, if he is correct there is only about sixteen feet difference.

Q. Do you know whether at that point, that your fence is actually East or West of the Williams water line?

A. No, sir, I do not.

Q. Have you ever seen the stake that Williams set as the point twenty chains west of the Southeast corner of Section Four?

A. Well, I know where the stake is, that was pointed out to me as being the Williams stake.

Q. By Williams?

A. No, sir, not by Williams.

Q. Anyone that made the survey with Williams?

A. No, sir, where he came up surveying the line between the forty acres known as the Vaughn forty and the piece that they bought from Noel.

Q. Not by anyone that knew it as a fact?

A. No, sir.

206 On redirect examination he said:

Q. Mr. Mason, I do not think you understood Mr. Looney's question with reference to that picture? You stated that that picture was taken forty feet back of the true location of your line?

A. Yes, sir.

Q. What is the difference on the map, between the way your line is actually located and where Williams has his water line located?

A. I do not know whether I understand you or not.

Q. You stated, by scale that the difference between the point where Williams has the line located at this point where the photograph was taken and where Williams has his water line, was sixty-six feet?

A. Yes, sir, approximately.

Q. Now the picture was taken fifty feet west of your line?
A. Yes, sir.
Q. So the picture was taken at a point that Williams would put sixteen feet out in the water?
A. Yes, sir.
Q. That is the Hoffer-Williams map showing that to be sixteen feet out into the water?
A. Yes, sir, if I take this map as correct and measure the distance from the line they show, I would show that the point where that picture was taken to be sixteen feet out in the water.

On cross-examination he said:

Q. Mr. Mason, as a matter of fact your fence line must be behind the Williams line?
A. Well, I think it is, as far as that is concerned, there is no line blazed through between any of our claim at all.

207 Counsel for Defendant offered in Evidence the notices of the mineral location and notes filed by L. Hanszen and others, as recorded in Conveyance Book No. 59, page 267, with leave to substitute a certified copy thereof. Offered for the purpose of showing nothing except the proper recordation of the notes.
To be filed in Evidence and marked Exhibit No. 27.
Defendants close.

Testimony of W. W. Green.

W. W. GREEN, witness for Plaintiff, being first duly sworn, testified as follows:
On direct examination he said:

Q. Mr. Green, you have made a mineral location up there?
A. Yes, sir.
Q. About the Northeast corner, at the top of the Northeast quarter of Section Nine?
A. Yes, sir, on the Southern part of Sections Three and Four.
Q. On the Southwest quarter of Section Three and the Southeast quarter of Section Four?
A. Yes, sir.
Q. Mr. Williams made a survey of the section line between Sections Nine and Ten?
A. I do not remember that I saw him make the survey. Mr. Hoffer made one.
Q. Didn't you see him put the stake there?
A. He came through there, through the center of mine land, and claimed that he was surveying the traverse of 1854.
208 Q. He put a stake there?
A. Yes, sir.

Objected to by Counsel for Defendants as not in rebuttal.
Objection overruled by the Court.

To which ruling of the Court, Counsel for Defendant excepts and asks that this note stand in lieu of formal bill of exceptions.

Q. Down towards the west fence of your mineral claim did Williams drive a stake?
A. Yes, sir.
Q. Where did he put it?
A. Down in what is known as the slough in the west of my claim.
Q. In the center of the slough?
A. Yes, sir, as near as I could see.

On cross-examination he said:

Q. What direction does that slough take from the point where Williams drove the stake, going towards Cotton Shed, don't it go Northeast?
A. I think that it goes nearly North.
Q. You do not know what direction it takes from the point where Williams drove the stake to Cotton Shed?
A. That water runs, I suppose that it runs North.
Q. Which course does the slough take, North or Northeast?
A. I would think more North course, I judge.

Evidence closed.

209 *Certificate.*

I hereby certify that the above and foregoing contains a true and correct translation of my Stenographic notes taken on the trial of the above numbered and entitled cause.

(Signed) R. B. COOK,
Stenographer.

Shreveport, La., January 7th, 1911.

(Endorsed:) No. 13,843. In First District Court, Louisiana. Producers Oil Company vs. L. Hanszen et al. Evidence. Filed Jan'y 9, 1911. (Signed) S. A. Williams, Deputy Clerk.

210 Proceedings Had in the Supreme Court of the State of Louisiana.

Transcript of Appeal Filed.

No. 18,787.

PRODUCERS OIL CO.
vs.
L. HANSZEN et al.

Filed April 10, 1911.
(Signed) PAUL E. MORTIMER,
Clerk.

Agreement as to Filing Briefs.

SHREVEPORT, September 11, 1911.

Paul E. Mortimer, Esq., Clerk Supreme Court, New Orleans, La.

DEAR SIR: Noticing that your docket shows time for filing briefs as follows:

Monday, December 11, 18787—Producers Oil Co. vs. Hanszen.

Tuesday, December 12, 18851—W. H. Wadkins vs. Producers Oil Co. et al.

"Briefs for appellants must be filed on or before Monday, Sept. 18, 1911.

"Briefs for appellee must be filed on or before Monday, Sept. 25, 1911."

We hereby agree that the rules of Court be waived and all parties be given until December 1st, 1911 to file briefs; with the right thereafter to file supplemental and additional briefs.

211

Respectfully,

(Signed) FRANK J. LOONEY,
For Producers Oil Co.

(Signed) HERNDON & HERNDON,
For Atlanta & Shreveport Oil & Gas. Co.

(Signed) THIGPEN & HEROLD,
Att'ys for Defendant in Suit of Producers vs. Hanszen et al. & Att'ys, Plaintiff in Suit of Wadkins vs. Producers Oil Co. et al.

(Endorsed:) No. 18,787. Supreem Court Louisiana. Producers Oil Co. vs. L. Hanszen et al. Agreement as to filing briefs. Filed Sept. 12, 1911. (Signed) John A. Klotz, Dep. Clerk.

Cause Called, Argued and Continued.

(Extract from Minutes.)

NEW ORLEANS, MONDAY, December 11th, 1911.

The Court was duly opened, pursuant to adjournment. Present—Their Honors: Joseph A. Breaux, Chief Justice. And Frank A. Monroe, Olivier O. Provosty and Alfred D. Land, Associate Justices. Absent: Walter B. Sommerville, Associate Justice.

No. 18787.

PRODUCERS OIL CO.
vs.
L. HANSZEN et al.

This cause came on this day to be heard and was argued by counsel. Mr. F. J. Looney opened for the plaintiff, appellee; Mr.

S. L. Herold replied for the defendants, appellants. And
212 the usual hour for the adjournment of the court having arrived, the court ordered the cause to be continued until tomorrow, Tuesday, December 12th as an open cause.

Cause Called, Argued and Submitted.

(Extract from Minutes.)

NEW ORLEANS, TUESDAY, December 12th, 1911.

The Court was duly opened, pursuant to adjournment. Present—Their Honors: Joseph A. Breaux, Chief Justice. And Frank A. Monroe, Olivier O. Provosty, and Alfred D. Land, Associate Justices. Absent: Walter B. Sommerville, Associate Justice.

No. 18787.

PRODUCERS OIL CO.
VS.
L. HANSZEN et al.

This cause, continued from yesterday, December 11th, came on this day further to be heard and was argued by counsel: Mr. S. L. Herold, who was followed by Mr. Eugene Mackey, of the Pennsylvania Bar, pleaded for the defendants, appellants; and Mr. Looney closed the argument. The court then took the cause under advisement upon the papers on file.

Order to Reinstate for Argument.

(Extract from Minutes.)

At Chambers.

NEW ORLEANS, FRIDAY, October 18th, 1912.

No. 18787.

PRODUCERS OIL CO.
VS.
L. HANSZEN et al.

It is ordered by the Court that this cause be refixed for
213 argument, and that all counsel in the cause be notified.

Cause Continued.

(Extract from Minutes.)

NEW ORLEANS, MONDAY, January 20th, 1913.

The Court was duly opened, pursuant to adjournment. Present—Their Honors: Joseph A. Breaux, Chief Justice. And Frank A. Monroe, Olivier O. Provosty, Alfred D. Land and Walter B. Sommerville, Associate Justices.

No. 18787.

PRODUCERS OIL CO.
vs.
L. HANSZEN et al.

This cause was ordered by the Court to be continued until Tuesday, January 21st, 1913.

Cause Called, Argued and Continued.

(Extract from Minutes.)

NEW ORLEANS, TUESDAY, January 21st, 1913.

The Court was duly opened, pursuant to adjournment. Present—Their Honors: Joseph A. Breaux, Chief Justice. And Frank A. Monroe, Olivier O. Provosty, Alfred D. Land and Walter B. Sommerville, Associate Justices.

No. 18787.

PRODUCERS OIL CO.
vs.
L. HANSZEN et al.

This cause came on this day on the re-argument ordered in the cause: Mr. Edgar H. Farrar opened for the plaintiff, ap-
214 pellee. And the usual hour for the adjournment of the Court having arrived, the Court ordered the cause to be continued until tomorrow, for resumption of argument.

Cause Called, Argued and Submitted.

(Extract from Minutes.)

NEW ORLEANS, WEDNESDAY, January 22nd, 1913.

The Court was duly opened, pursuant to adjournment. Present—Their Honors: Joseph A. Breaux, Chief Justice. And Frank A. Monroe, Olivier O. Provosty, Alfred D. Land and Walter B. Sommerville, Associate Justices.

No. 18787.

PRODUCERS OIL CO.
VS.
L. HANSZEN et al.

This cause, continued from yesterday, came on this day further to be heard. Whereupon Mr. S. L. Herold, introduced to the court Mr. D. T. Watson, a member of the Pennsylvania Bar. Mr. Watson, then proceeded to reply for the defendant-, appellant-, and was followed by Mr. S. L. Herold, on the same side, who closed the argument. The court then took the cause under advisement upon the papers on file.

Final Judgment.

(Extract from Minutes.)

NEW ORLEANS, MONDAY, March 3rd, 1913.

The Court was duly opened, pursuant to adjournment. Present—Their Honors: Joseph A. Breaux, Chief Justice. And Frank A. Monroe, Olivier C. Provosty, Alfred D. Land and Walter B. Sommerville, Associate Justices.

215 His Honor, Mr. Justice Sommerville, pronounced the judgment and opinion of the court in the following case:

No. 18787.

PRODUCERS OIL CO.
VS.
L. HANSZEN et al.

The judgment appealed from is annulled, avoided and reversed; and there is judgment in favor of the defendants and against the plaintiff, dissolving the writ of sequestration issued herein, and dismissing this suit at plaintiff's cost; reserving to defendants any rights they may have.

His Honor, Mr. Justice Provosty, dissents and hands down reasons.

216 *Opinion of the Court.*

UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

NEW ORLEANS, MONDAY, March 3, 1913.

The Court was duly opened, pursuant to adjournment.

Present—Their Honors: Joseph A. Breaux, Chief Justice; Frank A. Monroe, Olivier O. Provosty, Alfred D. Land, Walter B. Sommerville, Associate Justices.

His Honor, Mr. Justice Sommerville, pronounced the opinion and judgment of the Court in the following Case:

217 Mr. Justice Sommerville.

MONDAY, Mar. 3, 1913.

No. 18787.

PRODUCERS OIL COMPANY
vs.
L. HANSZEN et al.

Appeal from the First Judicial District Court, Parish of Caddo, Hon. T. F. Bell, Judge.

This is a possessory action brought by plaintiff against five defendants, alleging that they have entered upon a part of lot No. 1 of section 4, township 20 N., Range 16 West, situated in the Parish of Caddo, State of Louisiana; lots 1 and 2 forming lands surrounded on three sides by the waters of James Bayou, a navigable stream; and known as Wilson's Point. And it has caused a writ of sequestration to issue to protect its rights in the premises; and it asks for judgment in its favor, declaring it to be entitled to the possession of said property, and ousting the defendants therefrom.

Lot No. 1 above referred to embraces an area of 12.84 acres, as shown by a survey made by deputy-surveyor Bristol, on the map attached hereto. Plaintiff traces its title to Alfred Wilson, Feby. 21, 1858, when one of its vendors acquired "all improvements lying on and about the following described land to-wit: The S. E. ¼ of the S. W. ¼ and S. W. ¼ of the S. E. ¼ of Section No. 4," and other land in section 9, township 20, Range 16 West.

Part of the land now claimed by plaintiff is in the S. E. ¼ and N. E. ¼ of the S. E. ¼ of Section 4. These portions of land do not appear to have been claimed by Alfred Wilson at the time that he sold to Ann Pitts.

218 Subsequently, Feby. 18, 1892, Thomas H. Pitts obtained a patent from the United States government to a plot of ground containing 123.88 acres, according to the official plat of the survey of said land returned to the general land office by the Surveyor General, which included lot No. 1, containing 12.84 acres, above referred to; which land was described in said patent as being "lots numbered one, two, three and four of section nine, and lots numbered one and two of section four, in township 20 North, of Range sixteen West, of Louisiana."

The lot numbered one above referred to is embraced within that portion of the S. W. ¼ of the S. E. ¼ of section four on the map which is hereto attached, bounded on the east and north by a red line, and on the west and south by the fractional and sectional lines, and which has been designated as the Bristol survey.

The additional land claimed by plaintiff, say some forty acres,

according to plaintiff's estimate, and eighty-seven acres according to defendants' estimate, is contained within the brown and green lines on said map, which represent the Williams and Barnes surveys, made respectively for plaintiff and defendants.

On the trial of the case the following stipulation was entered into: "It is admitted by both parties that J. N. Noel was in possession as owner from the date of his purchase in 1880 to the sale to the plaintiff of the property known as the Wilson's Point place, his corporeal possession being limited on the east and north by the Bristol meander line, and said Noel never exercised any acts of corporeal posession, or was ever in occupancy of any land in section four east of, or outside of said meander line, or of any of the land in controversy. This is not intended to apply to any other land west of the land in controversy. That Noel's possession was
219 vested by act of purchase and continued by occupancy by plaintiff."

But plaintiff contends that being the owner and in possession of lot No. one, bounded by the meander line of Bristol's survey on the east and north, that it is and was in constructive possession of all the property to the east and north of Bristol's meander line to the water's edge, and that defendants have trespassed on its property to the extent of forty acres or eighty-seven acres, as the case may be.

Defendants answered with a general denial, except as to certain admissions made in the answer. They deny that they are in possession of any part of lot 1, section 4, the property of plaintiff; and they allege that they are in sole and legal possession of some eighty-seven acres of land, giving full description of the same, and embraced within the Barnes survey on the map attached, traced with green lines, since April 2, 1910. They further deny that plaintiff or any of its ancestors in title, or any one else, ever had actual or constructive possession of any part of the land located by them.

They ask that plaintiff's demand be rejected at its cost and that they be recognized as owners of the property in dispute; and that the rights be reserved to them to sue on the writ of sequestration issued herein.

There was judgment in favor of the plaintiff, recognizing its ownership and possession of lot No. 1, "and that the tongue of land, on which defendants and their lessee have drilled an oil well, projecting north, and bounded North east and west by James Bayou, is a constituent and component part of lot No. 1, the boundary of said lot No. 1 being the water line of James Bayou; it being the purpose of this judgment to fix said James Bayou as the boundary of
220 said lot without regard to any arbitrary lines of survey." And a writ of possession was ordered to issue to carry out the judgment.

Plaintiff construes the judgment of the district court to be that it is the owner and in possession of the land west of the line between C. and D. on the fractional sectional line between the southeast quarter and southwest quarter of the southeast quarter of the section referred to, and then along the waters of James Bayou around the point, as is shown by the following quotation from its brief:

"All the plaintiff contends for is the land beginning at the point C, running to the point D., and then along the edge of the waters of James Bayou around the point, all of which is west of the body of water marked 'Cotton Shed Arm.' The land claimed comprises between 40 and 45 acres."

Defendants have appealed; plaintiff has not asked for any amendment of the judgment.

The possession of the land in controversy contended for by plaintiff is a constructive, and not an actual, possession of that land. It admits that it and its authors in title never were in actual occupancy of said land; but it claims that it is and was in actual occupancy of lot No. 1 as defined on the notes of surveyor Bristol, and that it is and was in constructive possession of the remainder of the land between the established meander line and James Bayou on the east and north of said lot, which is an occupancy of the whole, under the decisions in Sallier vs. Bartley, 113 La. R. 400 and Jones vs. Gossett, 115 La. R. 926.

As this is simply a possessory action we cannot go into an investigation of the title of plaintiff or of that of defendants. In Mott vs. Hopper, 116 La. R. 629, we say, with reference to the plaintiff's title in a possessory action: "Whether such title is a legal
221 title as against the United States, or as against the defendant, is another question, not necessary to determine in this suit." And, in the case of Smith vs. Grant Timber & Manufacturing Company, 130 La. R. 471, we say, with reference to defendant's title: "What might be the effect of said decision of the land department upon this case if the title were at issue is a matter not now up for consideration, as the suit is distinctly a possessory action, in which the title cannot be considered, but only the question of the possession vel non. * * * Now, if the question of title cannot be gone into, the legal situation is that, for all the purposes of the suit, the defendant company has no title—de non apparentibus et de non existentibus eadem est ratio. In other words, that the defendant company is not owner, and the plaintiff is not demanding anything of the owner, but simply to be restored to possession." Code of Practice, articles 4, 6, 53.

Plaintiff claims possession of the land in this suit as owner; and it produces a title from the United States government showing it to be the owner of lot No. 1, containing 12.84 acres, and it claims the additional forty or eighty-seven acres, as the case may be, as a part of lot No. 1, lying between the Bristol meander line and James Bayou; treating said meander line as a regular meander line, and not a boundary line. But, we cannot so consider it; particularly in view of the admission of plaintiff that: "It is admitted by both parties, that the land is controversy is high land, and was high land at the date that Bristol made his survey in 1871."

In Livingston vs. Heerman, 9 Martin, 656 (721), we say: "As at the time of the sale from Gravier and wife to Vessier,
222 there existed a portion of soil susceptible of private ownership between the levee and the river; that this soil was retained by the vendor." In Barre vs. City, 22 La. Ann. 612, we

say: "At the date of the sale to Maria St. Jean there existed in front of the lots she purchased 'a large batture, which the waters of the river covered only when they reached their highest elevation.' If this was the case, Maria St. Jean acquired no title to the alluvion formation. The title remained in her vendor."

And in Hollingsworth vs. Chaffe, 33 La. Ann., 547, we say: "From the various decisions of this court on the subject, we deduce the general rule, subject to some exceptions, that if at the time of the sale of a riparian estate the alluvion or batture attached has attained a sufficient elevation to be susceptible of private ownership, the alluvion does not pass with the land unless so expressed in the act or acts of sale."

In the patent from the United Stats to plaintiff's authors in title nothing was said with reference to "the high land, at the date that Bristol made his survey in 1871" embracing a body of land of forty to eighty-seven acres.

As plaintiff and its authors held no title to the land referred to it has had neither actual nor constructive possession of the same, and cannot therefore be heard to complain of the acts of these defendants. Its demand for possession must be denied. The meander line established by Bristol on the east and north-east of lot No. 1 does not meet any of the requirements set forth by the Supreme Court of the United States in defining a meander line, in Railroad Company vs. Schurmeir, 7 Wall., 272 (286), which is as follows: "Meander lines are run in surveying fractional portions of the public lands bordering upon navigable rivers, not as boundaries of the
223 tract, but for the purpose of defining the sinuosities of the banks of the stream, and as the means of ascertaining the quantity of the land in the fraction subject to sale, and which is to be paid for by the purchaser.

"In preparing the official plat from the field-notes, the meander-line is represented as the border-line of the stream, and shows, to a demonstration, that the water-course, and not the meander-line, as actually run on the land, is the boundary."

The language of this definition shows by the briefest analysis that the meander line is—

(*a*) "for the purpose of defining the sinuousities of the banks of the stream;"

(*b*) "as the means of ascertaining the quantity of the land in the fraction subject to sale, and which is to be paid for by the purchaser;" and

(*c*) being outlined and laid down on the plat, "is represented as the border-line of the stream, and shows, to a demonstration, that the water-course, and not the meander line, as actually run on the land, is the boundary."

Tested by this definition, which is sustained by all authorities, the so-called meander line of Bristol fails in all respects. Niles v. Cedar Point Club, 175 U. S. 300.

A glance at the annexed map, taken from the Williams and Barnes maps in the record, (Bristol made no map or plat, and the one made by the draftsman in the Land office is very small and

apparently without reference to a scale), shows that the Bristol meander line does not purport to define the sinuousities of a stream; it is not represented as the border line of a stream; and it shows, to a demonstration, that the meander line, as actually run on the land on the east and north-east of lot No. 1, is the boundary, and that a water course is not the boundary.

224 The cases of Hardin vs. Jordan, 140 U. S. 371 and Mitchell vs. Smale, 140 U. S. 406, cited by plaintiff, are without application here. There, the patents described the land conveyed by reference to the government map, which showed the lots fronting on the lake, and no meander lines were shown. The question there involved was not whether the patent carried the title to the water line, but whether it carried to the middle of the lake. In the case of Hardin vs. Jordan, the court said: "It will be observed that the government survey made in 1834 and 1835 upon which the patent was issued, not only laid down a meander line next to the lake, but also describes said lines as running 'along the margin of the lake;' and the plat of the survey returned to the general and local land offices, and referred to in the patent for identification of the land granted, exhibited the granted tract as actually bordering upon the lake."

And in Mitchell vs. Smale, the court held: "The official plat made from such survey does not show the meander line, but shows the general form of the lake deduced therefrom and the surrounding fractional lots adjoining and bordering on the same. The patents when issued referred to this plat for identification of the lot conveyed and are equivalent to and have the legal effect of a declaration that they extend to and are bounded by the lake or stream. Such lake or stream itself, as a natural object or monument, is virtually and truly one of the calls of the description or boundary of the premises conveyed; and all the legal consequences of such a boundary, in the matter of riparian rights and title to land under water, regularly follow."

It is argued that defendants are mere trespassers, and that they cannot attack plaintiff's title, under the decisions of this court

225 in Ballio vs. Burney, 3 Rob. 317, Bonis vs. James, 7 Rob., 149, and Stephenson vs. Goff, 10 Rob. 99. In Ballio vs. Burney we found that the plaintiff had a regular chain of deeds, which were valid on their faces, while defendants were mere trespassers, without any title whatever; we held that they could not be heard to pick flaws in plaintiff's title. In the case at bar plaintiff has no title to the land in question whatever. The case of Bonis vs. James presents a similar condition of affairs. Defendants were trespassers, they had no titles, while plaintiff occupied the land under notarial acts of sale. We there held that: "it cannot be permitted to any one under the pretext of an intention to acquire a title by purchase from the United States, to assume that the land he fancies, though in the possession of another, is public, and therefore liable to be entered on at pleasure, and the possessor's title subjected to investigation at the instance of a trespasser." And in Stephenson vs. Goff, 10 Rob., 99, plaintiff had title while defendant had not. The

controversy, as in the present case, was over a strip of land between the tract owned by plaintiff and the river, upon which defendant had settled; and he set up that the land had formed prior to the purchase by plaintiff, and was therefore not included in the act of purchase. We say: "the main question in the cause is, was the land on which Goff has fixed himself susceptible of ownership or occupation at the time when the lines of the plaintiff were run? If it were, and the lines were not extended so as to include all the high land, the plaintiff cannot now claim the batture which has formed adjoining the main land. The evidence satisfies us that the claim under which the plaintiff alleges possession was located as
226 near to the bar and alluvion forming as it could be. The surveyor is positive in his assertion that the lines were so run. He says that the side line was not marked at all, as he considered the river the boundary. This being the case, we think the plaintiff is entitled to the possession of the batture formed adjoining his land since his survey. * * * We cannot countenance the idea that because a citizen has, or may have, a controversy with the United States, or any other citizen, actually or in prospective, in relations to his rights and title to land, that this authorizes any one to take possession of it, and when sued for so doing, to interpose those difficulties, to protect him from the consequences of an open violation of the rights of both parties."

We are also cited to the case of Whitaker vs. McBride, 197 U. S. Rep. 510, in which the plaintiff, Whitaker, was a settler on an island in the main channel of the Platte river, and which had been in the possession of the defendant for more than ten years prior to the suit. Plaintiff had made application to the Land Department of the government to have the island surveyed, and was refused. The defendants held under a patent issued by the United States. The Court say: "The decision of the Supreme Court of the State was that the owner of land bordering on a river owns to the center of the channel and takes title to any small bodies of land on his side of the channel that have not been surveyed or sold by the government. It is the settled rule that the question of the title of a riparian owner is one of local law. * * *

"In our judgment the grants of the government bounded on streams and other waters, without any reservation or restriction of terms, are to be construed as to their effect according to the
227 law of the state in which the lands lie."

The court continues, in that opinion, referring to French-Glenn Live Stock Co. vs. Springer, 185 U. S. 47: "In the second, we held that, as the surveys showed a meander line bordering on a tract of swamp or marsh lands, the grant by patent terminated at the meander line and did not carry the swamp lands lying between it and the shores of Lake Erie. In the third, it appeared that there was no body of water in front of the meander line, and we held that that line must, therefore, be the limit of the grant, and the fact that outside the side lines extended there was a body of water did not operate to extend the grant into any portion of that body of water." And the court continued: "In such a case the rights of riparian proprietors are to be preferred to the claims of the settler."

The evidence in the record in this case, aside from the admissions of record, show- that there was and is a large quantity of swamp or marsh land on the east and north of the Bristol meander line.

But the defendants in this case are not mere trespassers. They have settled on unsurveyed lands belonging to the United States under the provisions of law. Act of Feb'y 11, 1897, provides that: "Any persons authorized to enter lands under the mining laws of the United States may enter and obtain a patent to land containing petroleum and other minerals and chiefly valuable therefor, under the provisions of the law governing placer mining claims." The land in question is placer ground, and these defendants are locators.

Section 910 of the Revised Statutes provides: "No possessory action between persons, in any court of the United States, for the recovery of any mining title, or for damages to any such title, shall be affected by the fact that the paramount title to the land
228 in which such mines lie is in the United States; but each case shall be adjudged by the law of possession." And in Mining Company vs. Kerr, 130 U. S. 256, where parties had taken possession under the laws of the United States, the court said that "the plaintiff and its grantors had done the work required by law on its mining claim, but had not at the time obtained a patent for either;" and it maintained plaintiff's right to remove a cloud from its title, or prospective title.

In Dall vs. Raunheim, 132 U. S. 260, the court say: "It does not appear in the present case that a patent of the United States had been issued to the plaintiff; but it appears that he had complied with all the proceedings essential to the issuance of such a patent. He is therefore the equitable owner of the mining ground, and the government holds the premises in trust for him to be delivered upon the payment specified. We accordingly treat him, in so far as the questions involved in this case are concerned, as though the patent had been delivered to him. Being entitled to it, he has a right to ask a determination of any claim asserted against his possession which may throw doubt upon his title."

And in Creede & Cripple Creek Mining & Drilling Co. vs. Uinta Tunnel Mining & Transportation Company, 196 U. S. 337, after quoting section 2319 Revised Statutes to the effect that: "all valuable mineral deposits in the lands belonging to the United States, both surveyed and unsurveyer, are hereby declared to be free and open to exploration and purchase;" the court proceeded to say: "a lode locat*ed* acquires a vested property right by virtue of his location," and then quoted section 23 Revised Statutes as follows: "The Locator * * * shall have
229 the exclusive right of possession and enjoyment of all the surface included within the lines of the location," etc.; and then proceeded as follows: "Until, therefore, by entry and payment to the government, the equitable title to the ground passes to the locator." Section 2320 provides: "No location of a mining claim shall be made until the discovery of vein or lode within the limits of the claim is located." And the court held that the plaintiff's title dated back to the time of discovery of the minerals in the

ground upon which the locator had settled. The court proceeded in its opinion to say: " 'Discovery in all ages and in all countries has been regarded as conferring rights or claims to reward. Gamboa, who represented the general thought of his age on this subject, was of the opinion that the discoverer of mines was even more worthy of reward than the inventor of a useful art. Hence, in the mining laws of all civilized countries the great consideration for granting mines to individuals is discovery.' 'Rewards so bestowed,' said Gamboa, 'besides being a proper return for the labor and anxiety of the discoverers have the further effect of stimulating others to search for veins and mines, on which the general prosperity of the state depends.'

"Location is the act or series of acts by which the right of exclusive possession of mineral veins and the surface of mineral lands is vested in the locator. For this the only requirement made by Congress is the marking of the surface or boundaries of the claim. * * *

"A location is not made by taking possession alone, but by working on the ground, recording and doing whatever else is required for that purpose by the acts of Congress and the local laws and regulations. * * *

230 "The order of time in which these several acts are performed is not of the essence of the requirements, and it is immaterial that the discovery was made subsequent to the completion of the acts of location, provided only the necessary acts are done before intervening rights of third parties accrue; etc.

"In 1 Snyder on Mines, section 354, it is said:

" 'While the general rule is, as stated elsewhere in the foregoing section, that a location must rest upon a valid discovery, yet a location otherwise good, with the discovery made after location, before the intervention of adverse claims or the creation of adverse rights, will validate the location from the date of discovery and generally from the first act towards claim and appropriation—this by relation.'

" 'In Morrison's Mining Rights, 11 Ed. p. 32:

" 'If a location be made before discovery, but is followed by a discovery in the discovery shaft, before any adverse rights intervene, such subsequent discovery cures the original defect and the claim is valid.' "

It is quite clear from the foregoing references that the defendants in this cause are not mere trespassers. It was admitted on the trial of the cause: "that defendants on the 2nd day of April, 1910, took actual possession of, and posted and filed notices of location under the placer mining laws of the United States, of the tract of land on which they are now in possession, and concerning which this suit is brought, which tract of land is described by metes and bounds in defendants' answer.

"It is further admitted that when defendants took possession of said land, they located the western boundary line of their location as the Bristol meander line, as properly located, and the

231 defendants do not claim the ownership or possession of any land west of the true location of said Bristol meander line.

"It is admitted that since the institution of this suit that the defendants have actually discovered oil and gas, and are now producing oil and gas from said property."

Defendants were in possession of the land April 2, 1910, prior to the time of the acquisition by plaintiff in this cause of lot No. 1, which was on April 15, 1910. Defendants do not attempt to disturb plaintiff in its possession of lot No. 1, containing 12.84 acres, which was acquired by patent from the United States Government.

In the case of Security Land Co. vs. Burns, 193 U. S., the Supreme Court say: "The patentees, it must be also borne in mind, get all the land they really purchased and paid for, as laid down by the lines and distances set forth in the survey and as stated in the patent. These lines and distances gave the patentees the amount they paid for; while if the fourth line of the boundary were taken out and others substituted, so as to reach the borders of the lake, they would get more land than was actually meant or than they supposed they were purchasing, or than they actually paid for." We say here that if the eastern and northern boundaries of lot No. 1 were taken out and other boundaries substituted, so as to reach James bayou, plaintiff would get three to seven fold more land than was actually mentioned and described in the patent conveying this lot, or than its ancestor in title supposed he was purchasing, or than he actually paid for.

The judgment appealed from is annulled, avoided and reversed; and there is judgment in favor of the defendants and against
232 the plaintiff, dissolving the writ of sequestration issued herein, and dismissing this suit at plaintiff's cost; reserving to defendants any rights they may have.

Provosty, J., dissents, and hands down reasons.

Syllabus.

(1) In a possessory action the question of title cannot be gone into; the defendant, for the purposes of the suit, having no title. C. P. 4, 6, and 53; Mott vs. Hopper, 116 La. R. 629; Smith vs. Grant Timber & Mfg. Co., 130 La. R. 471.

(2) If, at the time of the sale of a riparian estate, the alluvion or batture attached has attained a sufficient elevation to be susceptible of private ownership the alluvion does not pass with the land unless so expressed in the act of sale. Livingston vs. Heerman, 9 Martin 656; Barre vs. City, 22 La. Ann., 612; Hollingsworth vs. Chaffe, 33 La. Ann. 547; Stephenson vs. Goff, 10 Rob., 99.

(3) The question of the title of a riparian owner is one of local law. And grants of the Federal Government bounded on streams and other waters, without any reservation or restriction of terms, are to be construed as to their effect according to the law of the state in which the lands lie. Whitaker vs. McBride, 197 U. S. 510.

(4) Where the surveys show a meander line bordering on a

tract of swamp or marsh lands, the grant by patent terminates at the meander line, and does not carry the swamp lands
233 lying between it and the shores of the navigable water. Ib. Niles v. Cedar Point Club, 175 U. S. 300.

(5) "Meander lines are run in surveying fractional portions of the public lands bordering upon navigable rivers, not as boundaries of the tract, but for the purpose of defining the sinuosities of the banks of the stream, and as the means of ascertaining the quantity of the land in the fraction subject to sale, and which is to be paid for by the purchaser. In preparing the official plat from the field-notes, the meander line is represented as the border-line of the stream, and shows, to a demonstration, that the water course, and not the meander-line, as actually run on the land, is the boundary." Railroad Co. vs. Schurmier, 7 Wall. 272 (286).

(6) A locator on placer grounds belonging to the United States, surveyed or unsurveyed, is the equitable owner of the mining ground, and the government holds the premises in trust for him to be delivered upon the payment specified; and he has sufficient interest to protect his rights in the courts. Mining Co. vs. Kerr, 130 U. S. 256; Dahl vs. Raumhein, 132 U. S. 260; Creede & Cripple Creek Co., vs. Uinta Tunnel Co., 196 U. S. 337.

(Here follows map marked page 234.)

MAP

TOO

LARGE

FOR

FILMING

235 MONDAY, March 3rd, 1913.

No. 18787.

PRODUCERS OIL COMPANY,
vs.
L. HANZEN et als.

Mr. Justice PROVOSTY Dissenting:

The first survey of T. 20 R. 16, parish of Caddo, was made in 1839. At that time Ferry Lake occupied the greater part of the township. The surveyor left out of his survey a small island separated from the mainland by a slough. This small island was surveyed by the government in 1871, at the request of one Stephens D. Pitts, who had settled upon it. Although the island contained 687.20 acres of high land, the surveyor, Bristol, included within his survey only 280.12. The land thus included figures in his survey as parts of sections 4, 9, and 10. Stephens D. Pitts does not seem to have taken any further steps towards acquiring the land; but, in 1878, his son Thomas H. Pitts acquired from the government, by purchase, the N. W. ½ of the N. E. ¼ of section 9, containing 40 acres; and, in 1892, acquired, by location of military bounty warrants, lots 1, 2, 3 & 4 of section 9 and lots 1 and 2 of section 4, containing 123.88 acres. By these purchases he acquired all the land surveyed by Bristol in sections 4 and 9, except the N. E. ¼ of the N. E. ¼ of section 9. The land thus acquired constituted the western part of the island, and is bounded north, west and east, on the plat of the survey, by the meander line of the lake.

In 1880, the heirs of Thomas H. Pitts sold this land to Charles F. Walsh, and in 1884 Walsh sold it to James S. Noel, and in April 1910 Noel sold it to the plaintiff company. The
236 sale by the government to Thomas H. Pitts was by the acre, at so much an acre. The patent did not describe the land otherwise than by the numbers of the lots and sections according to the plat of survey. In the subsequent sales the description was by the numbers of the lots and sections, as in the patent, except that in the sale from Walsh to Noel the description begins as follows:

"The place known as the Wilson Point in Caddo Parish, La., bought of the heirs of T. H. Pitts and numbered as follows:" Here follows the description according to surveys.

These subsequent sales were not by the acre, but for a lump price. The acreage, however, was specified, and was the same that is specified in the patents.

The present suit was filed on July 1, 1910. It is a possessory action. Plaintiff alleges that in 1874 the Government of the United States sold to petitioner's author in title lots 1 and 2 of section 4, T. 20, N. R. 16, W., parish of Caddo, "forming a projection of land surrounded on three sides by the waters of James Bayou a navigable stream and known as Wilson's Point"; that petitioner's said author

in title took physical possession of the whole of said land by taking physical possession of part, and that this actual possession was thereafter continued by civil posession, and as such has passed to petitioners; that in 1910 the defendants put a wire fence around, and a keeper upon, a part of said lots, thereby disturbing petitioner's possession. The prayer is that the petitioner be decreed to be entitled to possession of said property and that the defendants be ousted.

In their answer the defendants deny generally the allegations of the petition and deny specially that they are or ever were in possession of any part of said lots 1 and 2. They describe with precision, by the calls of an actual survey, the land of which they are in possession, and allege that it consists of 87.9 acres and
237 lies outside of the lines called for by the petitioner's title as established by the government surveys. They specially deny that said line was a mere meander line; but aver that it ran through a body of high land, and left out of said lots 1 and 2 the said 87.9 acres, which at the time of said survey was high land. They allege that plaintiff's author in title Thomas H. Pitts acquired from the government by the acre, and made payments accordingly, namely 12.84 acres in lot 1; and cannot now extend this 12.84 acres so as to include the 87.9 acres as is attempted to be done. That respondents located the said 87.9 acres under the laws of the United States relative to the location of mining lands, and have made a discovery of oil and gas upon said land, and are therefore entitled to a patent. They prayed to be decreed to be owners and maintained in possession.

The note of evidence in the case shows, the following:

"It is admitted by both parties that J. S. Noel was in possession, as owner, from the date of his purchase, in 1880, to the sale to the plaintiffs of the property known as Wilson's Point place, his corporeal possession being limited on the East and North by the Bristol meander line, and said Noel never exercised any acts of corporeal possession, or was ever in occupancy of any land in Section Four, East of or outside of the said meander line, or of any of the land in controversy. This is not intended to apply to any other land West of the land in controversy. That Noel's possession was vested by act of purchase and continued by occupancy in the Plaintiff's.

"It is further admitted that defendants on the second day of April, 1910, took actual possession of, and posted and filed notices of location under the placer mining laws of the United States, of the tract of land on which they are now in possession, and cencerning which this suit is brought, which tract of land is described by metes and bounds in defendant's answer.
238 "It is further admitted that the defendants took possession of said land, and located the western boundary line of their location, as the Bristol meander line, as properly located, and the defendant does not claim the ownership or possession of any lands west of the true location of said Bristol meander line.

"It is admitted that since the institution of this suit that the

defendants have actually discovered oil and gas and are now producing oil from said property.

"It is admitted by both parties, that the land in controversy, is high land and was high land, at the date that Bristol made his survey in 1871."

The first contention of defendants is that they having thus prayed to be decreed to be the owners, and both parties having alleged ownership and sought to prove title, the suit has been converted into a petitory action.

This contention is unfounded. Both the allegation and the proof of title are proper in a possessory action, for the purpose of showing extent of possession,—under the principle that possession of part is possession of whole.

Plaintiff claims title to the land in dispute on the principle that where a stream is meandered on a survey, and the plat shows no surveyed land between the meander line and the water, but that the surveyed land fronts the stream, a patent for the land carries all the land between the meander line and the water.

Defendants do not contest the principle by which land between meander line and water passes with patent to surveyed land, but deny its applicability to the facts of this case, for the reason that the 87 odd acres in question were high land at the time of the survey and should have been included in the survey; and that, therefore, the case is not one for the application of the said rule,
239 but falls within the exception to it recognized by the court in Mitchell vs. Small, 140 U. S. 406; 36 L. Ed. 442-445, in these words:

"We do not mean to say that, in running a pretended meander line, the surveyor may not make a plain and obvious mistake or be guilty of a palpable fraud; in which case the government would have the right to recall the survey, and have it corrected by the courts, or in some other way."

This exception is as well established as the rule itself. The following cases present illustrations of what facts will bring a case within it. French-Glenn Live Stock Co. vs. Springer, 185 U. S. 47; 46 L. Ed. 800; Niles vs. Cedar Point Club, 175 U. S. 300; 44 L. Ed. 171; Horne vs. Smith, 159 U. S. 40; 40 L. Ed. 68; Security Land Co. vs. Burns, 193 U. S. 167; 48 L. Ed. 662; same case, 87 Minn. 97; Fuller vs. Shedd, 161 Ill. 462; 33 L. R. A. 155; Fulton vs. Fromdolog, 63 Tex. 330; Granger vs. Swart, Fed. Cases No. 5685; Lammers vs. Nissen, 4 Neb. 245; Glenn vs. Jeffrey, 75 Iowa, 20; Bissell vs. Fletcher, 19 Neb. 726; Shoemaker vs. Hatch, 13 Neb. 261; Barnhart vs. Ehohart, 33 Or. 274; Little vs. Pherson, 56 Pac. (Or.) 807.

For my part, I should agree with the three dissenting justices in Mitchell vs. Smale, supra, in thinking that that case fell rather within the exception than the rule, the surveyor having cut across a tongue of land approximately two acres wide, and extending some ten acres or more into a lake and containing some twenty five acres of high land, thereby including in a quarter section only 4.53 acres and leaving out of it 25 acres. But even conceding that

case to have been properly decided on its facts, it can be distinguished from the case at bar in that the said tongue of land could not have been included in the survey without giving to the quarter section, or even to the quarter quarter section, a most irregular or crazy shape, whereas in the case at bar the Lot 1 could have been filled out into a perfect square. And, moreover, the
240 survey which left out this tongue of land in Mitchell vs. Small was one embracing the entire township, and the object of cutting across the tongue of land was to avoid deflecting the line; whereas in the case at bar the surveyor was commissioned to survey a small island with a special view of ascertaining its area, and there was absolutely no reason for his not, at any rate, filling out the quarter quarter section.

Another significant circumstance in the present case is that the patentee lived on this little island; so that it can hardly be said that in buying from the government he relied upon the surveys and supposed that the land he was buying fronted on the lake.

The reason assigned by the surveyor why he left this point of land out of his survey is that it was a mere "spur of marsh extending out north." This assertion of the land having been marsh is contradicted by the admission:

"It is admitted by both parties that the land in controversy is high land, and was high land at the date that Bristol made his survey in 1871."

But even if at the time of this survey the land in controversy was "marsh," it was none the less land: marsh land is land, and not water. Niles vs. Cedar Point Club, 175 U. S. 300; 44 L. Ed. 171.

Plaintiff contends that defendant is attempting to attack collaterally a survey made and approved by the government, and that this cannot be done. Citing Stoneroad vs. Stoneroad, 158 U. S. 240; 39 L. Ed. 966; Russell vs. Maxwell Land Grant Co., 158 U. S., 253; 39 L. Ed. 971; Horne vs. Smith, 159 U. S. 40; 40 L. Ed. 68; Whitaker vs. McBride, 197 U. S. 510; 49 L. Ed. 857; Bonis vs. James, 7 Rob. 149; Stephenson vs. Goff, 10 Rob. 99.

The same contention was made in Security Land and E. Co. vs. Burns, 193 U. S. 167, 48 L. Ed. 662, and was met by the
241 court as follows:

"Nor in such a case is it necessary to go into equity to reform the patent. Where the patentee has in fact received and is in possession of all the land actually described in the lines and distances, and is seeking for more on the theory that his plat of survey carries him to the water, a denial of that claim upon such facts as appear here is well founded, and requires no reformation to the patent. It is simply a question of boundary, and it is a legal defense, it is but a denial that the land claimed is in fact included in the patent as it exists, and no aid of a court of equity is necessary to sustain such a defence."

Such collateral attack was made in all the cases cited hereinabove as illustrative of what condition of facts will bring a case within the exception to the rule that unsurveyed land between meander line and

navigable water passes with patent to the surveyed land; and other cases where such collateral attack was allowed could be cited.

But in all these cases the party contesting with the patentee had at the time of the institution of the suit acquired some right upon which to stand for litigating; whereas in the present case the defendants, at the time of the institution of the present suit, were mere possessors, without any right whatever. Their mere possession had not yet given birth to any right. They were, as yet, mere settlers. They base their claim of right exclusively upon the fact of their having located the land under the mining laws of the United States. These laws (Sec. 2320 U. S. R. S.) expressly provide that "no location of a mining claim shall be made until the discovery of the vein or lode within the limits of the claim located;" and in the case of Creede and C. C. M. & M. Co. vs. Ninta T. M. & T. Co., 196 U. S. 337-352, (49 L. Ed. 501-510), the Supreme Court of the United States
242 says: "a locator does not acquire the right of exclusive possession unless he has made a valid location, and discovery is essential to its validity. The language of the statute makes that plain, and parties may not go on the public domain and acquire the right of possession by the mere performance of the acts prescribed for a location."

True, if the plaintiff were itself without any right or color of right it would have no standing for dispossessing defendant, (Turpey vs. Madsen, 178 U. S. 215-220, 44 L. Ed. 1042-1045), and, hence, in a certain sense, the defendants may be said to have had, at the date of the institution of the suit, some right growing out of the mere possession; but while this right will afford a standing for resisting a mere intruder, it will not sustain a defense against one with color of title such as the plaintiff presents in this case. To that effect are the decisions of this court in Bonis vs. James, 7 Rob. 149; and Stephenson vs. Goff, 10 Rob. 99, cited supra. In the former of these cases this Court said:

"It cannot be permitted to any one under pretext of an intention to acquire a title by purchase from the United States to assume that the land he fancies, though in the possession of another, is public, and, therefore, liable to be entered on at pleasure and the possessor's title subjected to investigation at the instance of the trespasser."

In Stephenson vs. Goff this Court said:

"This case is very similar to that of Bonis vs. James, decided in March last. If the United States intend to disregard the location and survey made by their own surveyor and enter into a contest with the plaintiff, it is a matter with which we have nothing to do now. The defendant has no right to anticipate the result of such a contest and take possession of the land in advance; nor has he a right to assume the rights of the United States, if any they have, and provoke a contest in their behalf for his own benefit. The mere statement of the Surveyor-General that from the plats in his
243 office the land appears to be vacant does not make it so, nor does his declaration that it may hereafter appear that there has been an improper location of the confirmed claim destroy it.

"We cannot countenance the idea that, because a citizen has, or may have, a controversy with the United States, actually or in prospective, in relation to his rights and title to land, this authorizes any one to take possession of it, and, when sued for so doing, to interpose those difficulties to protect him from the consequences of an open violation of the rights of the parties."

In Whitaker vs. McBride, 197 U. S. 510, 49 L. Ed. 857, the Supreme Court of the United States, while expressly reserving to the government the right to raise the question of whether the land involved in that case, lying between a water course and a meander line, had been properly left out of the survey, denied that right to a settler upon the land, saying that "In such a case the rights of riparian proprietors are to be preferred to the claims of the settler."

The fact that the defendant made a discovery of petroleum can have no influence upon the case, as the discovery was made after the suit had been brought. The rights of the parties must be determined as of the date of the filing of the suit. The rights which the plaintiff was thus asserting to this land, the defendants were, under the doctrine of the said decisions in Whitaker vs. McBride, Bonis vs. James, and Stephenson vs. Goff without right or standing to contest. Therefore, for all the purposes of this suit, the plaintiff was owner of the land at that time, and the defendants were mere intruders. From that moment, there was nothing for the defendants to do but to vacate. If, instead of vacating, they held on, they did it as trespassers; and, such being the case, they cannot profit by such continued possession or by any of the effects or fruits of it. No one can profit by his wrong. The good order and peace of society required that they should vacate; and they can derive no benefit from not having done so.

I therefore dissent.

244 *Application for Rehearing.*

No. 18787.

Supreme Court of Louisiana.

PRODUCERS OIL CO.
vs.
L. HANSZEN et als.

To the Honorable the Chief Justice and Associate Justices of said Court:

The Producers Oil Co., plaintiff and appellee in this cause respectfully suggests error in the opinion and decree of this honorable Court as follows:

1st. That the Court erred in stating that plaintiff traced its title in this case to Alfred Wilson, when, on the contrary, as appears on the face of the petition, plaintiff traces its title to Thomas H. Pitts, who acquired said property from the Government of the United States under a patent granted to him,

Alfred Wilson was a mere trespasser on the land and in 1858 sold his improvements only to one Ann Pitts who thereafter disappears from all connection with this property. One Stephen D. Pitts in 1870 made application to the land office to survey the land claimed. After the survey the entry was made by Thomas H. Pitts and the patent of the United States was issued to him in 1892. The entry was evidently made many years before the formal patent was issued, because the tutrix of the minor Lucy Pitts under the advice of a family meeting sold this property, as described in the patent on November 22nd, 1880 to Chas. F. Walsh, who conveyed it February 15th, 1884 to James S. Noel, who conveyed it April 15th, 1910 to the plaintiff.

2nd. The Court erred in stating that the land claimed by
245 plaintiff according to its estimate is some forty acres and according to defendant's estimate eighty-seven acres.

The plaintiff claims the land situated between the true location of the Bristol meander Line of the left Bank of James Bayou in front of Lot one of Section 4, and the low water mark of James Bayou, and that is what it got judgment recognizing its right of possession of, the judgment being in the following words:

"That plaintiff is entitled to be maintained in possession of all of lot number one, section four Township twenty, Range sixteen Parish of Caddo, Louisiana, and that the tongue of land, on which defendants and their lessee have drilled an oil well, projecting North and bounded East, West and North by James Bayou is a constituent and component part of lot number one, the boundary of said lot number one being the water line of James Bayou; it being the purpose of this judgment to fix James Bayou as the boundary of said lot without regard to any arbitrary lines of survey."

There could be no estimate of the acreage contained in the claim of plaintiff because the proper location of the Bristol meander line could not be fixed and consequently the parties agreed (R. p. 69), as follows:

"There being a dispute between the plaintiff and the defendant as to the true location of the Bristol meander line, referred to above, it is agreed that the said issue as to the true and exact location of said line is not to be passed upon in this case, said issue being relegated to a subsequent proceeding herein should the Court sustain the defendant's position that said line is the true boundary between the property."

It is admitted by Barnes (R. p. 73) that no estimate of the acreage of this claim has been made.

The defendant's estimate is of the whole of its mining claim, which on its face embraces land in Section 3 and also a part of the bed of James Bayou; none of which plaintiff claimed. Its claim is the spur or high land, projecting from the body of Section four and surrounded on three sides by the waters of a navigable stream,
246 which spur was cut off by the U. S. Surveyor and not figured on the map by which the United States sold the property.

There being no doubt that the defendant's pretended mining claim took in all that a real and correct survey would show of the land

lying between the true location of the Bristol meander line and the low water mark of James Bayou, and the well being sunk on the high spur of land, the Court gave judgment for the claim, the boundaries of which have to be fixed by survey.

4th. That the Court erred in saying that the plaintiff construes the judgment of the District Court to be that it is the owner and in possession of the land west of the line between certain points on the map annexed to the opinion.

The plaintiff never made any claim of this sort in respect to the judgment either orally or in brief. It protested from the beginning that there was no question of title at issue in this case and maintained that it was a mere possessory action, in which the titles were referred to and offered in evidence in accordance with the settled jurisprudence of this Court merely to show the extent and nature of the possession.

5th. That the Court erred in making any reference to the decisions in this State interpreting particular deeds of sale or riparian property between individuals in respect to alluvion, there being no alluvion at issue in this case; and if the doctrine is of any moment in this case it erred in not applying those cases which hold that when a property is sold and one of its boundaries is described as the
247 river itself, then the title goes to the low water mark of the stream.

6th. That in interpreting the patent of the United States the Court erred in not confining its considerations to the official map and the official survey of the United States.

7th. That the Court erred in holding that according to the plat and survey of the United States the Bristol meander line is not the meander line of a stream but a boundary line, because in this respect the finding positively contradicts the field notes of the Surveyor and the official map of the United States.

The field notes show that the outer line of lots one and two of Section 4 from meander corner to meander corner were the meanders of the "left bank of James Bayou." The plat drawn in accordance with the field notes show that the meander line was the traverse of James Bayou and every call of this traverse is carried on the plat, in a separate table, and every such call is figured on the plat along the margin of the stream.

8th. That the Court misinterpreted and misapplied the jurisprudence of the Supreme Court of the United States in respect to the claims and rights of the plaintiff and particularly the cases of Railroad Company vs. Schurmeir, 7 Wall. 272; Niles vs. Cedar Point Club, 175 U. S. 300; Hardin vs. Jordan, 140 U. S. 371; and Mitchell vs. Smale, 140 U. S. 406.

9th. That the Court erred in holding that the defendants were not mere trespassers when they entered upon the land in question April 2nd, 1910.

248 10th. That the Court erred in misinterpreting the admission made by the parties to the effect "that the land in controversy is high land and was high land at the date that Bristol made his survey in 1871," this admission being made as to the spur of

land covered by the judgment and running north of lot one of Section 4, and bounded on three sides by James Bayou.

The Court subsequently contradicts this interpretation by finding that "the evidence in the record in this case, aside from the admissions of record show that there was and is a large quantity of swamp or marsh land on the East and North of the Bristol meander line."

11th. That the Court erred in adopting and making a part of its opinion a map prepared for use in argument by the counsel of defendant showing his views of the case. We respectfully protest against the use of this map as an official map to define the claims of the plaintiff.

Wherefore, plaintiff prays that a rehearing may be granted in this cause and that on such rehearing the judgment herein entered in this Court may be reversed and the judgment entered in the lower Court may be restored.

Respectfully submitted,

(Signed) FARRAR, JONES, GOLDSBOROUGH & GOLDBERG, *Att'ys.*

(Endorsed:) No. 18,787. Supreme Court of Louisiana. Producers Oil Company vs. L. Hanszen. Application for rehearing. Filed March 13, 1913. (Signed) John A. Klotz, Dep. Clerk.

249 *Rehearing Refused.*

(Extract from Minutes.)

NEW ORLEANS, MONDAY, March 31st, 1913.

The Court was duly opened, pursuant to adjournment. Present—Their Honors: Joseph A. Breaux, Chief Justice. And Frank A. Monroe, Olivier O. Provosty, Alfred D. Land and Walter B. Sommerville, Associate Justices.

No. 18787.

PRODUCERS OIL CO.
VS.
L. HANSZEN et al.

By the COURT:

It is ordered that the rehearing applied for in this case be Refused.

250 UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

I, Paul E. Mortimer, Clerk of the Supreme Court of the State of Louisiana, do hereby certify that the foregoing two hundred and

forty-nine (249) pages, contain a full, true and complete transcript of the proceedings had in the First Judicial District Court, for the Parish of Caddo, in a certain suit wherein Producers Oil Co. was plaintiff, and L. Hanszen et al., were defendants, with the exception of those documents which, in accordance with the stipulation between counsel, page 267 of this record, are to be forwarded in original; and, also, of all the proceedings had in this Honorable Court on the appeal taken by said defendants, which appeal is now on the files thereof under No. 18,787.

In Testimony Whereof I have hereunto set my hand and affixed the seal of said court, at the city of New Orleans, this the 24th day of April, A. D. 1913.

[Seal Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER,
Clerk Supreme Court of Louisiana.

251 UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

I, Joseph A. Breaux, Chief Justice of the Supreme Court of the State of Louisiana, do hereby certify that Paul E. Mortimer is Clerk of the Supreme Court of the State of Louisiana; that the signature of Paul E. Mortimer to the foregoing certificate is in the proper handwriting of him, the said clerk; that said certificate is in due form of law, and that full faith and credit are due to all of his official acts as such.

In Testimony Whereof, I have hereunto set my hand and seal, at the city of New Orleans, this the 24th day of April, A. D. one thousand, nine hundred and thirteen.

[Seal Supreme Court of the State of Louisiana.]

JOS. A. BREAUX,
Chief Justice Supreme Court of Louisiana.

252 UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

I, Paul E. Mortimer, Clerk of the Supreme Court of the State of Louisiana hereby certify that the Supreme Court of the State of Louisiana is the highest Court of law in Louisiana, and that the Honorable Joseph A. Breaux is the Chief Justice of said Court, and that his signature to the above certificate is genuine.

In Witness Whereof I hereunto set my hand and the seal of the Court aforesaid, at the city of New Orleans, this the 24th day of April, A. D. one thousand, nine hundred and thirteen.

[Seal Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER,
Clerk Supreme Court Louisiana.

253 In the Supreme Court of Louisiana.

No. 18787.

PRODUCERS OIL COMPANY
vs.
L. HANZEN et al.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

The Producers Oil Company, Plaintiff in Error in the above entitled and numbered cause from the judgment of the Honorable the Supreme Court of Louisiana herein entered upon the Third day of March, 1913, which became final on March 31st, 1913, by the refusal on that day of an application for a rehearing in said cause, now comes and assigns as error in the said judgment and in the record of said cause the following, and makes this assignment part of its writ of error herewith filed:

1. That the Court erred in not giving full legal effect to the Patent of the United States under which the plaintiff holds and claims the land in controversy.

2. That the Court erred in refusing to hold that the meander line figured on the official plat of the United States and shown in the official field notes of the United States, in accordance with which the Patent of the United States under which plaintiff holds and claims was issued, is a meander line.

3. That the Court erred in holding that the meander line so figured on the official map of the United States and so described in the official field notes of the United States is a boundary line and not a meander line.

254

4. That the official plat of the United States and the official field notes of the United States, both showing that Wilson's Point, the land in controversy, was surrounded on three sides by a navigable stream and the meander line of that stream being so indicated on the map and so described in the official field notes of the United States, the Court erred in not holding that the Patent of the United States, issued in accordance with said official map and official field notes, carried title to any projecting spurs not figured on the map and actually projecting into the stream beyond the meander line.

5. That the Court erred in not holding that under the laws of the United States the defendants were mere trespassers at the time they entered upon the land in dispute and were mere trespassers at the time this suit was brought and without any right to disturb the plaintiff's claim to the property in question, or to dispute the correctness of the official survey and plat of the United States on which the Patent was based issued by the Government to the vendor of plaintiff.

6. That the survey of the United States under which the plaintiff claims never having been questioned by the United States, the Court erred in holding that the defendants had any right or au-

thority to question this survey under the facts agreed to in this case.

7. That the Court erred in not taking judicial notice of the geographical fact that by the removal by the United States in 1874 of the raft in Red River the water line in James Bayou or Ferry Lake had been reduced from five to eight feet, thus changing the physical conditions under which the United States survey in 1871 was made and thus leaving a dereliction along the shores of James Bayou which enured to the benefit of the riparian proprietor under the laws
255 of the State of Louisiana.

8. That the Court erred in holding that under the patent, plat and survey of the United States Lots 1 and 2 of Section 4, at issue in this case, were not riparian property.

9. That the Court erred in holding that the title derived by the plaintiff from the United States under the patent granted by the United States and based on the official plat and the official survey by the United States did not carry title to the low water line of James Bayou and to any projections or spurs in front of the land sold by the United States as they existed at the time the survey and plat were made and to any lands added thereto since that date by the changes in the level of the waters of James Bayou.

Wherefore the Producers Oil Company prays the judgment of the Honorable the Supreme Court of the United States upon these assignments and prays that the judgment of the Supreme Court of Louisiana may be annulled and reversed, and the judgment of the District Court for the Parish of Caddo may be reinstated, and petitioner will ever pray.

EDGAR H. FARRAR,
Counsel of Producers Oil Co., Plaintiff in Error.

[Endorsed:] No. 18787. Supreme Court of Louisiana. Producers Oil Company versus L. Hanzen et al. Assignment of error made part of writ of error. Filed Apl. 3, 1913. Paul E. Mortimer, clerk. Farrar, Jonas, Goldsborough & Goldberg, Suite 1114 Hibernia Bank Building, New Orleans.

256 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Louisiana, Greeting:

Because in the record and proceedings, as also in rendition of the judgment of a plea which is in the said Supreme Court of the State of Louisiana before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between the Producers Oil Company as plaintiff and Lydia Hanzen, Sam W. Mason, Dillard P. Eubank, Robert L. Stringfellow and H. Earl Barnes, defendants, No. 18787 of the docket of said court wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wehrein was drawn in question the validity of a statute of, or an authority exercised under said State, on the ground of their being re-

pugnant to the Constitution, treatise or laws of the United States and the decision was in favor of such their validity; or wherein was drawn in question the construction
257 of the clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said Producers Oil Company as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, within 30 days from the date hereof, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable Edward D. White, Chief Justice of the Supreme Court of the United States — 3d day of April, in the year of our Lord one thousand nine hundred and thirteen.

[Seal U. S. District Court for the Eastern Dist. of La., N. O. Div.]

H. J. CARTER,
Clerk of the District Court of the United States for the Eastern District of Louisiana.

Allowed by
JOS. A. BREAUX, *with Supersedeas,*
Chief Justice of the Supreme Court of Louisiana.

[Endorsed:] No. 18787. Supreme Court of the State of Louisiana. The Producers Oil Co., Pl*ft.*-in-error, versus Lydia Hanzen et als., Defendants-in-error. Writ of Error. Original Writ of Error to Supreme Court of the United States. Filed Ap'l 3, 1913. Paul E. Mortimer, clerk.

258 *Copy of Bond for Writ of Error.*

Know all men by these presents, That we, The Producers Oil Company, a corporation of the State of Texas, as principal, and the United States Fidelity and Guaranty Co., Baltimore, Maryland, as surety, are held and firmly bound unto Lydia Hanszen, Sam W. Mason, Dillard P. Eubank, Rob't L. Stringfellow and H. Earl Barnes, in the full and just sum of Ten Thousand Dollars to be paid to the said Lydia Hanszen, Sam W. Mason, Dillard P. Eubank, Robert L. Stringfellow and Earl Barnes, their certain attorney, ex-

ecutors, administrators or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administors, jointly and severally, by these presents. Sealed with our seals and dated this 3d day of April, in the year of our Lord, one thousand nine hundred and thirteen.

Whereas, lately at a Session of the Supreme Court of the State of Louisiana, holding sessions in and for the State of Louisiana, in a suit depending in said Court, between the Producers Oil Co. and Lydia Hanszen and others, Number 18,787, of the docket of said Court, a judgment was rendered against the said Producers Oil Company and the said Producers Oil Company having obtained a writ of error and filed a copy thereof in the Clerk's Office of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said Lydia Hanszen and others, citing and admonishing them to be and appear before the Supreme Court of the United States, to be holden at Washington, D. C., within
259 30 days from the date thereof.

Now, the condition of the above obligation is such, That if the said Producers Oil Company shall prosecute its writ of error to effect, and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) PRODUCERS OIL COMPANY,
By EDGAR H. FARRAR, [SEAL.]
Its Att'y at Law and in Fact.
(Signed) UNITED STATES FIDELITY & GUARANTY CO.,
By WILLIAM H. KLINESMITH, [SEAL.]
Its Attorney in Fact. [SEAL.]

Sealed and delivered in presence of—
(Signed) AL. C. KAMMER.

Approved by—
(Signed) JOS. A. BREAUX,
Chief Justice Supreme Court of Louisiana.

(Endorsed:) No. 18,787—Supreme Court of Louisiana—No. 18,787—Producers Oil Co., Plaintiff in error, vs. (Bond) Lydia Hanszen, et als., Defendants in error.—Filed Ap'l 3, 1913. (Signed) Paul E. Mortimer, Clerk.

260 *Certificate of Lodgment.*

UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

I, Paul E. Mortimer, Clerk of the Supreme Court of the State of Louisiana, do hereby certify that there was lodged with me, as such

clerk, on April 3rd, 1913, in the matter of Producers Oil Co., Plaintiff-in-error vs. L. Hanszen, et al., defendants-in-error:

First. Original assignment of errors and original writ of error, as herein set forth.

Second. The original Bond for writ of error, of which a copy is herein set forth.

Third. Copy of the writ of error and attached assignments lodged for the defendants in error by counsel for plaintiff in error.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at the city of New Orleans, this the 24th day of April, Anno Domini, one thousand nine hundred and thirteen.

[Seal Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER,
Clerk Supreme Court of Louisiana.

261 THE UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

The President of the United States to Lydia Hanzen, a femme sole, who resides in Caddo Parish, in the State of Louisiana, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the City of Washington, within thirty days from the date hereof pursuant to a writ of error filed in the Clerk's Office of the Supreme Court of the State of Louisiana at New Orleans, wherein The Producers Oil Co. is plaintiff and Lydia Hanzen, Sam W. Mason, Dillard P. Eubank, Robert L. Stringfellow and H. Earl Barnes are defendants to show cause, if any there be, why the judgment rendered against the said Producers Oil Co. as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, this 3d day of April in the year of our Lord one thousand nine hundred and thirteen.

[Seal Supreme Court of the State of Louisiana.]

JOS. A. BREAUX,
Chief Justice of the Supreme Court of the State of Louisiana.

Service accepted Apr. 21st, 1913.

THIGPEN & HEROLD,
Att'ys for Def'ts.

[Endorsed:] Supreme Court of the State of Louisiana. No. 18,787. Producers Oil Co. vs. Lydia Hanzen et als. Citation. *Sheriff's Return.* Filed Ap'l 23, 1913. Paul E. Mortimer, Clerk.

262 THE UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

The President of the United States to Sam. W. Mason, who resides in Caddo Parish, in the State of Louisiana, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the City of Washington, within thirty days from the date hereof pursuant to a writ of error filed in the Clerk's Office of the Supreme Court of the State of Louisiana at New Orleans, wherein The Producers Oil Co. is plaintiff and Lydia Hanzen, Sam W. Mason, Dillard P. Eubank, Robert L. Stringfellow and H. Earl Barnes are defendants to show cause, if any there be, why the judgment rendered against the said Producers Oil Co. as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, this 3d day of April in the year of our Lord one thousand nine hundred and thirteen.

[Seal Supreme Court of the State of Louisiana.]

JOS. A. BREAUX,
Chief Justice of the Supreme Court of the State of Louisiana.

Service accepted April 21st, 1913.

THIGPEN & HEROLD,
Att'ys for Def'ts.

[Endorsed:] Supreme Court of the State of Louisiana. No. 18,787. Producers Oil Co. vs. Lydia Hanzen et als. Citation. *Sheriff's Return.* Filed Ap'l 23, 1913. Paul E. Mortimer, Clerk.

263 THE UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

The President of the United States to Dillard P. Eubank, who resides in Caddo Parish, in the State of Louisiana, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the City of Washington, within thirty days from the date hereof pursuant to a writ of error filed in the Clerk's Office of the Supreme Court of the State of Louisiana at New Orleans, wherein The Producers Oil Co. is plaintiff and Lydia Hanzen, Sam. W. Mason, Dillard P. Eubank, Robert L. Stringfellow and H. Earl Barnes are defendants to show cause, if any there be, why the judgment rendered against the said Producers Oil Co. as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, this 3d day of April in the year of our Lord one thousand nine hundred and thirteen.

[Seal Supreme Court of the State of Louisiana.]

JOS. A. BREAUX,
Chief Justice of the Supreme Court of the State of Louisiana.

Service accepted April 21st, 1913.

THIGPEN & HEROLD,
Att'ys for Def'ts.

[Endorsed:] Supreme Court of the State of Louisiana. No. 18,787. Producers Oil Co. vs. Lydia Hanzen et als. Citation. *Sheriff's Return.* Filed Ap'l 23, 1913. Paul E. Mortimer, Clerk.

264 THE UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

The President of the United States to Robert L. Stringfellow, who resides in Caddo Parish, in the State of Louisiana, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the City of Washington, within thirty days from the date hereof pursuant to a writ of error filed in the Clerk's Office of the Supreme Court of the State of Louisiana at New Orleans, wherein The Producers Oil Co. is plaintiff and Lydia Hanzen, Sam. W. Mason, Dillard P. Eubank, Robert L. Stringfellow and H. Earl Barnes are defendants to show cause, if any there be, why the judgment rendered against the said Producers Oil Co. as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, this 3d day of April in the year of our Lord one thousand nine hundred and thirteen.

[Seal Supreme Court of the State of Louisiana.]

JOS. A. BREAUX,
Chief Justice of the Supreme Court of the State of Louisiana.

Service accepted Apr. 21st, 1913.

THIGPEN & HEROLD,
Att'ys for Def'ts.

[Endorsed:] Supreme Court of the State of Louisiana. No. 18,787. Producers Oil Co. vs. Lydia Hanzen et als. Citation. *Sheriff's Return.* Filed Ap'l 23, 1913. Paul E. Mortimer, Clerk.

265 THE UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

The President of the United States to H. Earl Barnes, who resides in Caddo Parish, in the State of Louisiana, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the City of Washington, within thirty days from the date hereof pursuant to a writ of error filed in the Clerk's Office of the Supreme Court of the State of Louisiana at New Orleans, wherein The Producers Oil Co. is plaintiff and Lydia Hanzen, Sam. W. Mason, Dillard P. Eubank, Robert L. Stringfellow and H. Earl Barnes are defendants to show cause, if any there be, why the judgment rendered against the said Producers Oil Co. as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, this 3d day of April in the year of our Lord one thousand nine hundred and thirteen.

[Seal Supreme Court of the State of Louisiana.]

JOS. A. BREAUX,
Chief Justice of the Supreme Court of the State of Louisiana.

Service accepted Apr. 21st, 1913.

THIGPEN & HEROLD,
Att'ys for Def'ts.

[Endorsed:] Supreme Court of the State of Louisiana. No. 18,787. Producers Oil Co. vs. Lydia Hanzen et als. Citation. *Sheriff's Return.* Filed Ap'l 23, 1913. Paul E. Mortimer, Clerk.

266 *Return to Writ.*

UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the complete record and proceedings in the within entitled case, together with all things concerning the same.

In witness whereof, I hereunto subscribe my name, and affix the seal of the said Supreme Court of Louisiana, in the city of New Orleans, this 24th day of April, 1913.

[Seal Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER,
Clerk of Supreme Court of Louisiana.

267 *Agreement of Counsel.*

Supreme Court of the State of Louisiana.

No. 18787.

PRODUCERS OIL COMPANY
vs.
LYDIA HANSZEN et al.

It is hereby agreed by counsel for all parties that, in making up the transcript in this case for the Supreme Court of the United States on the Writ of Error taken by the Producers Oil Company, all the maps and photographs offered in evidence in this case in the lower court and carried to the Supreme Court of the State in the original shall be transmitted to the Supreme Court of the United States in the original.

(Signed) FARRAR, JONAS, GOLDSBOROUGH & GOLDBERG,
Counsel for Producers Oil Co.,
Plaintiff in Error.

(Signed) THIGPEN & HEROLD,
Counsel for Lydia Hanszen et als.,
Defendants in Error.

(Endorsed:) No. 18,787. Supreme Court Louisiana. Producers Oil Co. vs. L. Hanszen, et al. Agreement of counsel. Filed April 23d, 1913. (Signed) Paul E. Mortimer, Clerk.

A true copy.
Clerk's Office, New Orleans, Ap'l 24th, 1913.
[Seal Supreme Court of the State of Louisiana.]
PAUL E. MORTIMER, *Clerk.*

Endorsed on cover: File No. 23,672. Louisiana Supreme Court. Term No. 165. The Producers Oil Company, plaintiff in error, vs. Lydia Hanzen, Sam W. Mason, Dillard P. Eubank, Robert L. Stringfellow, and H. Earl Barnes. Filed May 5th, 1913. File No. 23,672.

Office Supreme Court, U. S.
FILED
JAN 21 1915
JAMES D. MAHER
CLERK

United States Supreme Court.

OCTOBER TERM, 1914.

No. 165.

PRODUCERS OIL COMPANY,
Plaintiff in Error,

versus

LYDIA HANZEN *ET ALS.*
Defendants in Error.

EDGAR H. FARRAR,
Counsel for Plaintiff in Error.

HAUSER PRINTING CO., "The Legal Printers," 720 Peydras St., N. O., La.

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Proposition advanced in argument:

(*a*)

The action is possessory, and no question of title is involved, or can be decided, because not in issue 13

(*b*)

Actual possession of part of an estate, with title to the whole, is possession of the whole, and gives the holder of the title the right to maintain a possessory action as to the part not actually occupied or physically possessed. (*Sallier vs. Bartlett*, 113 La. 400; *Jones vs. Gossett et als.*, 115 La. 926, and authorities there cited; *Leonard vs. Garrett*, 128 La., at pp. 542 and 543) 14

(*c*)

Consequently, in an action to protect constructive possession of that part of an estate not in actual possession, the titles are averred and put in issue for the sole purpose of showing the nature and extent of possession (*Mott vs. Hopper*, 116 La. 629) 15

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(*d*)

On the agreed statement of facts, the defendants were mere trespassers and intruders..... 16, 17

(*e*)

The mining laws of the United States do not grant the right to search for minerals in lands which are the property of individuals, nor authorize any disturbance of the title or possession of such lands (*Del Monte Mining Co. vs. Last Chance Co.*, 171 U. S. 55)..... 16

(*f*)

Defendants, not having discovered any oil on the lands seized by them, and posted and surveyed as a mining claim, before doing such acts, got no rights of possession or any other rights under the mining laws of the United States as against the constructive possession of such lands by plaintiff. Discovery must precede location (U. S. R. S., Sec. 2320; *Enterprice Co. vs. Rico-Aspen Co.*, 167 U. S. 168; *Calhoun Mining Co. vs. Ajax Co.*, 182 U. S. 499; *Mining Co. vs. Tunnel Co.*, 196 U. S., at pp. 352, 363)..... 17

(*g*)

Discovery of oil after this suit was brought, and after the land was seized under a writ of sequestration, and released by the defendants on bond, does not relieve them from being in-

truders and trespassers, as their rights must be determined as of the time when they invaded the premises claimed by the plaintiff, and thus provoked this suit..... 18

(*h*)

Defendants, being mere trespassers on lands *prima facie* conveyed to the plaintiff, and covered by the patent and plat of the United States to plaintiffs's vendors, and at the time of the trespass in the constructive possession of the plaintiff, cannot be heard to contest the plaintiff's claim to the property under the patent of the United States or the survey and plat on which the patent is based (*Bonis vs. James*, 7 Rob. (La. Reports) 149; *Stephenson vs. Goff*, 10 Rob. 99; *Whitaker vs. McBride*, 197 U. S. 510).....18, 19, 20

(*i*)

The patent granted by the United States to plaintiff's vendor, being based on a plat showing that Lot 1 of Section 4 was bounded north, east and west by a navigable stream, which plat shows a meander or traverse line all around the border of the bounding stream, drawn in accordance with the field notes, and shows also no surveyed land between the meander line and the water's edge, conveys to the grantee any spur or strip of land actually existing between the meander line and the water line. (*R. R. Co. vs. Schurmeir*, 7 Wall. 272; *Mitchel*

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vs. Smale, 140 U. S. 414; *Hardin vs. Jordan,* 140 U. S. 414; *Horne vs. Smith,* 159 U. S. 40; *Whitaker vs. McBride,* 197 U. S. 510; *Forsyth vs. Smale,* 7 Biss. 201 (Fed. Cas. No. 4950); *Grand Rapids & Ind. R. R. Co. vs. Butler,* 159 U. S. 87; *U. S. vs. Chandler-Dunbar Co.,* 209 U. S. 447) 21

(*j*)

Grants of the United States for lands bounded on streams and other waters, without any reservation or restriction of terms, are to be construed, *as to their effect,* according to the law of the State in which the lands lie. (*Hardin vs. Jordan, supra; Whitaker vs. McBride, supra.*) This means that the Federal grant must alone be looked to in order to determine whether it is a grant bounded on the stream or water. If the Federal grant is, by its terms, riparian, then the rights of the riparian grantee are determined by the local law 27, 28

(*k*)

The action of the Supreme Court of Louisiana in ignoring the official plat on which plaintiff's patent was based, and the meander line delineated on that plat, was purely arbitrary 29

(*l*)

The intention of the United States Government in making the grant is paramount;

PAGE.

and, if that intention was to make the delineated meander line a meander line, and not a boundary line, then it must be held to be a meander line 29, 30

(*m*)

Official patents and surveys of the United States cannot be attacked collaterally, or in litigations between private persons. (*Stoneroad vs. Stoneroad*, 158 U. S. 240; *Russell vs. Maxwell Land Grant Co.*, 158 U. S. 253; *Horne vs. Smith*, 159 U. S. 40; *Whitaker vs. McBride*, 197 U. S. 510.) In the absence of attack by the United States on the survey and patent to plaintiff, it is idle to say that to claim that a meander line, clearly shown to be such and intended to be such by the United States, is a boundary line, and not a meander line, is not to attack collaterally the patent and the survey on which it is based..... 30, 31

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United States Supreme Court.

OCTOBER TERM, 1914.

No. 165.

PRODUCERS OIL COMPANY,
Plaintiff in Error,

versus

LYDIA HANZEN *ET ALS.*
Defendants in Error.

STATEMENT OF CASE.

The Producers Oil Company brought this suit in the District Court for the Parish of Caddo, in the State of Louisiana, to protect its possession of land claimed by it and covered by its title, derived from the United States, which was unlawfully invaded by the defendants, taken possession of by them, and surrounded by a fence, under the pretense of locating a mining claim under the laws of the United States.

The facts are that by patent dated February 18, 1892, the Government of the United States sold to Thos. H. Pitts lots 1 and 2 of Section 4, in Township 20 north of Range 16 West, and some other lots in Section 9. These lands were located with a soldier's warrant, which had been transferred to Pitts. Although the record does not show it, this location was made by Pitts on July 6, 1874.

This land had been squatted upon in early times by a man named Wilson, who evidently never took any steps to obtain title thereto. In 1858 (Rec., p. 24) he sold his improvements to Ann Pitts, describing them as lying on and about the following described land—to wit, the southeast quarter of the southwest quarter and the southwest quarter of the southeast quarter of Section 4, and the east half of the northwest quarter and west half of northeast quarter of Section 9, Township 20, Range 16 North, containing 160 acres, more or less, fractional losses being considered. As no survey had ever been made by the United States of this property, and the *locus in quo* appeared in the official map of the township, prepared in 1840, as open water, this description must have been guessed at, and the subsequent official survey shows that, at least as to Section 4, the guess is correct, because Lots 1 and 2 of Section 4, figured on the official survey, correspond to the fractional southwest quarter of the southeast quarter and the fractional southeast quarter of the southwest quarter of Section 4. The locality was popularly known as "Wilson's Point," evidently taking its name from the old squatter.

In November, 1870, application was made by one S. D. Pitts to the United States Land Office to survey a certain parcel of land lying on Jims Bayou, in Caddo Parish, about

thirty miles north of Shreveport. He stated that frequent applications had been made to enter it, but upon examining the maps it had been found to be lake. He claimed to have occupied it for many years, and to have acquired the improvements from the original settler. He stated that there might be a half to a section of the land. He accounted for the fact that it had never been surveyed by the supposition that the surveyor had made the survey in high water, and had failed to cross a slough at the time, and, hence, concluded that all across the slough was water or submerged land. (Rec., p. 23.) Some correspondence then ensued between the Surveyor General of Louisiana and S. D. Pitts and one Buckner, his counsel, in which the land to be surveyed was styled "Wilson's Point." There must have been a later application made by Thomas H. Pitts, because on July 1, 1871, the Surveyor General of Louisiana wrote to the Commissioner of the Land Office, saying (Rec., p. 26):

> "On the 13th day of April last Thomas H. Pitts, of Caddo Parish, La., made application for the survey of a small island, which is described as follows: A small island or tract of land situated in Ferry Lake, in Township 20 North of Range 16 West, Northwestern Land District of Louisiana, which was omitted when the adjacent lands were surveyed, and which is separated from the mainland by a channel ten to forty feet wide. I examined the records and data in my office and became satisfied that the island was public lands and had never been surveyed. I, therefore, made an estimate of the cost of surveying it, as directed in instructions to surveyors general, dated June, 1862; at the same time notifying him that the depositing of money for the survey thereof would in no manner affect the right of any parties in said lands, nor give priority of claim to the depositing.

> "In due time Mr. Pitts made the deposit according to my estimate, and I herewith enclose the certificates of deposit, etc. I have also entered into a contract with Byron B. Bristol, United States Deputy Surveyor, for the survey of the tract of land as described in the application aforesaid, and I herewith enclose the same with the bond duly executed according to law and instructions, and respectfully solicit your approval of the same."

The contract of survey with Bristol was for the survey of a small island or point of land. (Rec., p. 27.)

The field notes of Bristol were described as field notes of the survey of Wilson's Point. (Rec., pp. 27, 28.) They were approved by the Surveyor General as the "field notes of the survey of Wilson's Point." (Rec., pp. 31, 32.) They were transmitted to the Commissioner of the General Land Office at Washington and to the United States Land Office at Natchitoches, together with the diagram of the survey, as field notes and diagram of the survey of "Wilson's Point." (Rec., p. 32.) The official plat or diagram pictures the property as "Wilson's Point," and shows Lots 1 and 2 of Section 4 as surrounded by water on three sides—*i. e.*, east, north and west.

The land entered as aforesaid and patented to Thos. H. Pitts on the basis of this diagram or plat, drawn in accordance with the field notes, came to the plaintiff by the following chain of title:

From J. S. Noel by deed dated April 15, 1910. (Rec., p. 16.)

J. S. Noel acquired from Chas. F. Walsh and wife by deed dated February 15, 1884. (Rec., pp. 17, 18.)

Chas. F. Walsh acquired from the tutrix of the minor heir of Thos. H. Pitts, under advice of a family meeting, by deed dated November 23, 1880. (Rec., pp. 18, 19.)

Thos. H. Pitts acquired from the United States as above stated.

Neither the Government of the United States nor any of its officials, nor anybody else, ever at any time questioned this survey, or the title and possession of Pitts and his transferees. Part of the land was cleared and cultivated, and was so cleared and cultivated in 1871, when the Government survey was made.

The official plat of this survey is Plat No. II in the appendix to this brief.

As stated above, this plat shows that all that part of Wilson's Point which lies in Section 4 is bounded east, north and west by the waters of James Bayou, a navigable stream. The meander line all around the point is delineated on this plat, and on the plat is the detailed table of the traverse, in front of Section 4, taken from the field notes. Both meander corners for the "left bank of James Bayou," in front of Section 4, are located in the section line dividing Section 4 from Section 9. These meander corners are so located in the field notes, and all the calls from these two corners are described as "Meanders of the left bank of James Bayou."

This plat further shows that the section line dividing Sections 3 and 4 from Sections 10 and 9 is very close to the arm of James Bayou in the southwest quarter of Section 3 and the southeast quarter of Section 4. The notes of survey show that the corner of Sections 3, 4, 9 and 10 was one chain, or 66 feet, north of this point. (Rec., p. 29.) This plat further shows, first, that the whole of the southeast quarter of the southeast quarter of Section 4, except the narrow strip

about a chain wide, lying between the section line and the waters of the arm of James Bayou, would be covered by said arm of James Bayou; second, that the corner between the southeast quarter of the southeast quarter of Section 4 and the southwest quarter of the southeast quarter of Section 4 would lie in a part of the arm of James Bayou which projects a considerable distance down into Section9; third, that the meander corner for the left bank of James Bayou is located to the west of this projecting part of the arm of James Bayou. This projecting arm is shown on plat and in field notes to be 3.50 chains, or 231 feet, wide, and in the field notes it is described as "a deep slough full of green cypress" (Rec., p. 29), evidently so deep that the surveyor could not cross it on the section line he was running, and he had to make an offset southwest and north to get back to the projections of the section line west of the slough. [N. B.—In the record in this case the field notes are made to say the east bank of the slough, but the error is palpable.]

According to the notes the meander corner was located 24.50 chains from the established corner of Sections 3, 4, 9 and 10, and as the east edge of the deep slough which stopped the running of the section line boundary was 18.50 chains from this corner, and as the slough was 3.50 chains wide, this meander corner was 2.50 chains, or 165 feet, from the west edge of this slough. At this point the field notes state "leave bottom and enter upland here."

It is manifest that at the time this survey was made, in the latter part of July, 1871, the water in James Bayou was at the low water mark, because that was the time of year when the water was low.

It is also manifest that the meander line followed the high-water mark of James Bayou, and ran along the foot

of the high land bordering James Bayou. If the surveyor did this he followed the law of the State, which makes the ordinary high water mark the limit of the banks of a navigable stream.

At the fifth call in the notes of the meanders of the left bank of James Bayou the field notes say "spur of marsh extend out north."

The officials of the Government who drew this plat from these field notes, and the officials of the Government who approved these field notes and this plat (according to both of which the land was sold), evidently did not think that the spur of land running out north from Section 4 was of sufficient importance to be figured. The survey clearly indicated to them that the surveyor had "cut the point" in accordance with a well-known and judicially recognized habit and custom of Government surveyors. The officials regarded this spur as "a neglected fragment," and, therefore, did not show it on the plat as unsurveyed land, outside of Lot 1 of Section 4, but drew the plat so as to show that there was nothing between the meander line and the public waters of James Bayou, and to show that Lots 1 and 2 of Section 4 had a water boundary on the east, north and west.

As shown by the evidence and the photographs in this case, from this call in the field notes there extends north and north by east a narrow ridge of high land a distance of 1,630 feet. Between this ridge and the permanent waters of James Bayou, at their low water mark stage, there extends a strip of low flat lands which were plainly, according to the official map of 1839, a part of the permanent bed of James Bayou. They must have been such when the additional Bristol survey was made in 1871.

This appears from the field notes of Bristol, who locates the corner of Sections 3, 4 and 10 at one chain from James Bayou. The survey of Williams (putting his section line back 2.25 chains to make it concur with the supposed Bristol line) shows that in 1910 this corner was 9.50 chains from this corner to the water line in James Bayou. It thus appears that in the period of thirty-nine years which elapsed between these surveys the water line of James Bayou had receded 517 feet. This accords with the historical and geographical fact, of which the Court will take judicial notice, that in 1874 the United States Government took the raft out of Red River, located in that river, at a point below, where James Bayou connects with its waters, and that the consequence of the removal of that raft has been to lower the water line in James Bayou from five to eight feet.

At this point we call attention to the fact that none of the corners of this official survey by Bristol are discernable and that none of them had ever been discovered (Rec., pp. 65, 66), and that the surveys by Barnes, made for the defendants, and of Williams, made for the plaintiffs, guess at what the Bristol corners were, and hence the wide discrepancy between these two surveys and the maps representing them. Indeed, the true location of the Bristol meander line was so indefinite and uncertain that the parties agreed that the issue as to the true and exact location of said line is not to be passed on in this case (Rec., p. 39), and that the defendants located as the western boundary line of their mineral claim the Bristol "meander *line as properly located.*" (Rec., p. 39.)

On April 2, 1910, while this Wilson's Point place was in the undisturbed possession of J. S. Noel, and had been

in his undisturbed possession for thirty years, the defendants, assuming that the Bristol meander line was not a meander line at all, entered into actual possession of all the land on Wilson's Point lying between the supposed location of Bristol's meander line, east and north of said meander line and the waters of James Bayou, and laid off and surveyed a mineral claim under the mining laws of the United States, which included all the land on Wilson's Point aforesaid, as well as lands which would be in the southeast quarter of Section 4 and the southwest quarter of Section 3, including also a large part of the bed of James Bayou. This whole survey included about 87 acres. How much of this 87 acres is included east and north of the Bristol meander line, between that meander line and the banks of James Bayou, is not known, and has never been estimated. (See testimony of Barnes, Rec., p. 83.)

This undetermined amount of land is what is in issue in this case, and not the whole of defendants' pretended mineral location. It consists of the long, narrow spur of high land cut off by the surveyor as above indicated, and such flat and overflowed land lying between it and the present actual water line of James Bayou—most of this flat land being, as we claim, formed by the lowering of the water line in James Bayou and the retirement of the water line, and the balance of it being the bed of James Bayou covered by the ordinary high water in said bayou.

This limitation of the claim was thoroughly understood in the lower court, and it was with reference to this claim that the statement of agreed facts was made and the judgment rendered. The admission was that the land in controversy is high land, and was high land at the date that Bristol made his survey. (Rec., p. 39.)

The judgment of the lower Court was (Rec., p. 14):

> "It is ordered, adjudged and decreed that plaintiff is entitled to be maintained in possession of all of lot No. 1, Section 4, Township 20, Range 16, Caddo Parish, Louisiana, and that the tongue of land on which defendants and their lessee have drilled an oil well, projecting north, and bounded north, east and west by Jeems Bayou, is a constituent and component part of lot No. 1, the boundary of said lot No. 1 being the water line of Jeems Bayou; it being the purpose of this judgment to fix Jeems Bayou as the boundary of said lot without regard to any arbitrary lines of survey.
>
> "It is further ordered, adjudged and decreed that defendants are mere trespassers on said lot No. 1, and the writ of sequestration sued out by the plaintiff herein is made perpetual, and it is ordered that such writs of possession issue as are necessary to carry out this judgment."

The defendants built a fence around the outside of the whole 87 acres, included in their survey made by Barnes, one of the defendants, and make a pretended mineral location on it for petroleum. At that time no oil or minerals had ever been discovered on this land by the defendants or anybody else. It is admitted that after this suit was brought the defendants discovered and produced oil on the property in dispute. (Rec., p. 39.)

This was done under the cover of a release bond for $10,000, executed July 7, 1910 (Rec., p. 8), within a week after the suit was brought.

On the question of plaintiffs' possession, the following admission was made (Rec., p. 39):

> "It is admitted by both parties that J. S. Noel was in possession, as owner, from the date of his

purchase in 1880 to the sale to the plaintiff of the property known as the Wilson Point Place, his *corporeal* possession being limited on the east and north by the Bristol meander line, and said Noel never exercised any acts of corporeal possession or was ever in occupancy of any land in Section 4 east of or outside of the said meander line, or of any of the land in controversy. This is not intended to apply to any other land west of the land in controversy. That Noel's possession was vested by act of purchase, and continued by occupancy in the plaintiffs."

The Supreme Court of Louisiana, with Mr. Justice Provosty dissenting, reversed the judgment of the lower Court and dismissed the plaintiff's action.

In this court the Producers Oil Company has filed the following assignments of error:

"1. That the Court erred in not giving full legal effect to the patent of the United States under which the plaintiff holds and claims the land in controversy.

"2. That the Court erred in refusing to hold that the meander line figured on the official plat of the United States and shown in the official field notes of the United States, in accordance with which the patent of the United States under which plaintiff holds and claims was issued, is a meander line.

"3. That the Court erred in holding that the meander line so figured on the official map of the United States, and so described in the official field notes of the United States, is a boundary line, and not a meander line.

"4. That the official plat of the United States and the official field notes of the United States, both showing that Wilson's Point, the land in controversy,

was surrounded on three sides by a navigable stream, and the meander line of that stream being so indicated on the map, and so described in the official field notes of the United States, the Court erred in not holding that the patent of the United States, issued in accordance with said official map and official field notes, carried title to any projecting spurs not figured on the map and actually projecting into the stream beyond the meander line.

"5. That the Court erred in not holding that, under the laws of the United States, the defendants were mere trespassers at the time they entered upon the land in dispute, and were mere trespassers at the time this suit was brought, and without any right to disturb the plaintiff's claim to the property in question, or to dispute the correctness of the official survey and plat of the United States on which the patent was based, issued by the Government to the vendor of plaintiff.

"6. That, the survey of the United States under which the plaintiff claims never having been questioned by the United States, the Court erred in holding that the defendants had any right or authority to question this survey under the facts agreed to in this case.

"7. That the Court erred in not taking judicial notice of the geographical fact that by the removal by the United States in 1874 of the raft in Red River the water line in James Bayou or Ferry Lake had been reduced from five to eight feet, thus changing the physical conditions under which the United States survey in 1871 was made, and thus leaving a dereliction along the shores of James Bayou which inured to the benefit of the riparian proprietor under the laws of the State of Louisiana.

"8. That the Court erred in holding that, under the patent, plat and survey of the United States, Lots 1 and 2 of Section 4, at issue in this case, were not riparian property.

"9. That the Court erred in holding that the title derived by the plaintiff from the United States, under the patent granted by the United States, and based on the official plat and the official survey by the United States, did not carry title to the low water line of James Bayou, and to any projections or spurs in front of the land sold by the United States, as they existed at the time the survey and plat were made, and to any lands added thereto since that date by the changes in the level of the waters of James Bayou."

ARGUMENT.

This action is what is known under the law of Louisiana as a possessory action. In such an action the question of title is not in issue and cannot be raised.

The decision on the question of possession has no effect on the question of title, because title is not in issue and cannot be put in issue.

As "possession is nine points of the law," and as the plaintiff in a petitory action must recover on the strength of his own title, and not on the weakness of his adversary's title, the law of Louisiana will not permit one who is in actual or constructive possession of property to be deprived of that possession and be thus driven to recover that possession by a petitory action, or action of ejectment, where the adversary could take advantage of any deficiency or flaw in *his* adversary's title, when, if he were compelled to sue, he could not recover because of defects in his own title.

It is manifestly the interest of society that possession should not be disturbed or changed except by process of law.

And this rule is necessary to protect both actual or physical possession and constructive possession. Possibly it is more important in regard to constructive than to actual possession, because such a large part of every man's property is only in his constructive possession. This is particularly the case as to predial estates, or estates consisting of lands in rural communities.

This principle is embodied in Article 3437 of the Louisiana Revised Civil Code, which provides:

> "It is not necessary, however, that a person, wishing to take possession of an estate, should pass over every part of it; it is sufficient if he enters in and occupies a part of the land, provided it be with the intention of possessing all that is included within the boundaries."

And it is the established jurisprudence of the State that actual possession of part of a tract with title to the whole is possession of the whole, and gives the holder of the title the right to maintain a possessory action as to the part not actually occupied or physically possessed.

> *Sallier vs. Bartlett*, 113 La. 400; *Jones vs. Gosset et als.*, 115 La. 926, and authorities there cited; *Leonard vs. Garrett*, 128 La., at pp. 542 and 543.

As a necessary consequence of the above doctrine, in every possessory action, where the plaintiff is protecting his constructive possession, although the question of title is not in issue, and cannot be put in issue, the title of plain-

tiff is averred and put in issue *for the purpose of showing the nature and extent of possession.*

This is the settled doctrine of the Supreme Court of Louisiana.

Mott vs. Hopper, 116 La. 629.

We do not base our claim in this case upon any theory of actual or corporeal possession, or physical occupancy of the property in dispute—*i. e.*, the land lying between the meander line as shown on the official map of the United States and the low-water mark in James Bayou, or Ferry Lake. Our claim is that our title from our vendors, who obtained title from the United States, is shown by the official records of the United States to be surrounded on three sides by the waters of a navigable stream, which stream was meandered by the surveyor, as shown by his field notes, and as shown by the officially approved plat of survey, which was made part of the patent, and with reference to which the patent must be construed; that under the settled law of the United States such a patent carries title to the low-water mark (such being the law of riparian ownership in Louisiana); that the meander line is not the boundary of the land, but the water line is such boundary; that any unsurveyed and projecting spurs or gores of land projecting out into the water from the meander line pass to the patentee; that thirty-nine years of undisputed possession (unquestioned by the United States) of the main body of the land surveyed by the patent carries constructive possession of the land to the water's edge, including all projecting spurs or gores, and that no private person can collaterally attack the survey and the patent of the United States. We, accordingly, claim that we had legal and constructive possession of the gores, or point, or projection,

of land lying in front of Lot 1 of Section 4, covered by our patent, which the defendants unlawfully entered upon and took possession of and subsequently located upon it a pretended mining claim, and that we are entitled to be restored to our legal possession and to have the defendants ejected therefrom. The United States is no party to this cause, and is not affected by any decree herein. If the defendants have title to this property, such title is not concluded by the judgment. The effect of this judgment will be simply to deprive them of the illegal advantage they obtained by seizing possession unlawfully of land which they knew was in the constructive possession of plaintiff. They will be compelled to be plaintiffs in a petitory action, in which they must recover on the strength of their own title, instead of defendants, in such an action, with the advantage of compelling the plaintiff to recover on the strength of its own title.

I.

On the agreed statement of facts the defendants were mere piratical adventurers, without any right to invade the property covered by the patent of the United States to the plaintiffs.

The mining laws of the United States do not grant the right to search for mineral in lands which are the property of private individuals, nor authorize any disturbance of the title or possession of such lands.

> *Del Monte Mining and Milling Co. vs. Last Chance Mining and Milling Co.*, 171 U. S. 55.

At the time of defendants' seizure of the lands in dispute they had never discovered any petroleum on this prop-

erty, nor had they made any such discovery at the time when this suit was brought and the land was taken out of their illegal possession by a writ of sequestration. At the time of the seizure they had done nothing but seize the land, post and file notices of location under the placer mining laws of the United States.

This gave them no rights of possession or any other rights. Such is the provision of Section 2320 of the United States Revised Statutes and the jurisprudence under it.

> *Enterprise Mining Co. vs. Rico-Aspen Co.*, 167 U. S. 108; *Calhoun Mining Co. vs. Ajax Mining Co.*, 182 U. S. 499; *Mining Co. vs. Tunnel Co.*, 196 U. S., at pp. 352, 353.

In the last quoted case the Court says:

> "It is undoubtedly true that discovery is the initial fact. The language of the statute makes that plain, and parties *may not go on the public domain and acquire the right of possession* by the mere performance of acts prescribed for a location."

While it may not be of vital importance as between the locater and the Government as to whether location precedes or follows discovery, yet in determining the lawfulness of the acts of the pretended locater as regards third persons claiming a title to possession of the property, discovery is, as declared by the statute and the jurisprudence, *"the initial fact."* Without previous discovery, not even the germ of a valid possession could exist.

As well said by Mr. Justice Provosty in his opinion dissenting from the opinion of the majority:

> "The fact that the defendant made a discovery of petroleum can have no influence upon the case, as

the discovery was made after the suit had been brought. The rights of the parties must be determined as of the date of the filing of the suit. The rights which the plaintiff was thus asserting to this land the defendants were, under the doctrine of the said decisions in *Whitaker vs. McBride, Bonis vs. James* and *Stephenson vs. Goff*, without right or standing to contest. Therefore, for all the purposes of this suit, the plaintiff was owner of the land at that time, and the defendants were mere intruders. From that moment there was nothing for the defendants to do but to vacate. If, instead of vacating, they held on, they did it as trespassers; and, such being the case, they cannot profit by such continued possession or by any of the effects or fruits of it. No one can profit by his wrong. The good order and peace of society required that they should vacate; and they can derive no benefit from not having done so."

II.

The Government of the United States never having questioned the survey and plat on which it granted the title to Lot 1 of Section 4, and having, as shown by the plat, made the waters of James Bayou the boundary of said lots, and there being, according to said plat, no unsurveyed land between the meander line and the waters of James Bayou, it was beyond the power of defendants to enter upon the lands in dispute claimed to be actually in existence between the meander line and the waters of James Bayou for any purpose under the laws of the United States, and to put plaintiff upon the defense of its title or possession.

This is the jurisprudence both of the State of Louisiana and of the United States.

Bonis vs. James, 7 Rob. 149; *Stephenson vs. Goff*, 10 Rob. 99; *Whitaker vs. McBride*, 197 U. S. 510.

In *Bonis vs. James* the Court said:

"It cannot be permitted to anyone under the pretext of an intention to acquire a title by purchase from the United States to assume that the land he fancies, though in the possession of another, is public, and, therefore, liable to be entered on at pleasure and the possessor's title subjected to investigation at the instance of a trespasser."

In *Stephenson vs. Goff* the Court said:

"This case is very similar to that of *Bonis vs. James*, decided in March last. If the United States intend to disregard the location and survey made by their own surveyor and enter into a contest with the plaintiff, it is a matter with which we have nothing to do now. *The defendant has no right to anticipate the result of such a contest and take possession of the land in advance; nor has he a right to assume the rights of the United States, if any they have, and provoke a contest in their behalf for his own benefit.* The mere statement of the Surveyor General that from the plats in his office the land appears to be vacant does not make it so, nor does his declaration that it may hereafter appear that there has been an improper location of the confirmed claim destroy it.

"We cannot countenance the idea that, because a citizen has, or may have, a controversy with the United States, or another citizen, actually or in prospective, in relation to his rights and title to land, this authorizes anyone to take possession of it, and, when

> *sued for so doing, to interpose those difficulties to protect him from the consequences of an open violation of the rights of the parties."*

In *Whitaker vs. McBride,* where the plaintiff had taken possession of an unsurveyed island after the United States had granted patents for the riparian lands on both sides of the river in the State of Nebraska (under whose laws riparian proprietorship goes to the middle of the stream), and refused to make a survey of the island when requested, the Court said:

> "No citizen can overrule the action of the department, assume that the island ought to have been surveyed, and proceed to occupy it for the purposes of homestead or pre-emption entry. In such a case the rights of riparian proprietors are to be preferred to the claims of the settler."

It cannot comport with the public policy, or the peace and order, of any civilized community for the Courts to look otherwise than with disfavor upon conduct similar to that of the defendants. Such acts lead, in most cases, to assault and bloodshed. Indeed, if it had not been for the urgent solicitations of the writer of this brief, the locality of this trespass would have been the scene of violence, as the first impulse of the plaintiff was to fling these trespassing defendants out neck and heels and at all hazards.

If there is an error or mistake in this official survey and the plat of the United States, made the basis of its patent, these defendants cannot in any respect attack this survey and patent collaterally, and cannot in anticipation of any correction by the United States take possession of the land covered by the patent and hold the same against

the patentee or his assigns upon any claim or pretense that they intend to acquire them from the United States.

III.

It is the settled jurisprudence of this Court that where an official United States survey and plat on which is based a patent show that a tract of land has a frontage on a lake or stream, such stream is the true boundary, and not the meander or traverse line of said stream, and all gores, spits, points, strips or spurs of land between the meander line and the water line which are not exhibited on the official plat as surveyed land pass under the patent.

R. R. Co. vs. Schurmeir, 7 Wall. 272; *Mitchel vs. Smale,* 140 U. S. 414; *Hardin vs. Jordan,* 140 U. S. 371; *Horne vs. Smith,* 159 U. S. 40; *Whitaker vs. McBride,* 197 U. S. 510; *Forsyth vs. Smale,* 7 Biss. 201 (Fed. Cas. No. 4950); *Grand Rapids & Ind. R. R. vs. Butler,* 159 U. S. 87; *U. S. vs. Chandler-Dunbar Co.,* 209 U. S. 447.

In those States where the rights of the riparian owner go to the middle of the stream, the above rule covers unsurveyed and unnoted islands.

Same authorities.

In Louisiana the ownership of river banks belongs to those who possess the adjacent lands (C. C., Art. 455), and the banks of a river or stream are understood to be those which contain it in its ordinary state of high water.

C. C., Art. 457.

The provisions of these two articles are as follows:

C. C., Art. 455:

> "The use of the banks of navigable rivers is public; accordingly, everyone has a right freely to bring his vessels to land there, to make fast the same to the trees which are there planted, to unload his vessels, to deposit his goods, to dry his nets and the like. *Nevertheless, the ownership of the river banks belongs to those who possess the adjacent lands.*"

Art. 457:

> "The banks of a river or stream are understood to be that which contains it in its ordinary state of high water; for the nature of the banks does not change, although for some cause they may be overflowed for a time.
>
> "Nevertheless, on the borders of the Mississippi and other navigable streams, where there are levees established according to law, the levees shall form the banks."

IV.

On the point that the patent and plat of the United States survey, on which the patent was based, carry to the plaintiff title (enough, at least, to litigate the question of the defendants' trespass), this case is exactly similar to many of the cases decided by the Supreme and other Courts of the United States.

That of *Railroad vs. Schurmier*, 7 Wall. 272, is almost identically this case. It is too long to quote, and we ask that the Court will examine it in detail, and particularly the statement of the case from pages 273 to 278.

That of *Forsythe vs. Smale*, 7 Biss. 201 (Fed. Case No. 4950), is identically this case. It involved "a gore or strip

of land extending from Lot 3 in a southwesterly direction into the lake." Plaintiff had a patent to Lot 3. The United States survey showed that Lot 3 was bounded by the lake. The lakeshore was meandered, and the plat did not show the gore or strip of land extending out into the lake. The Court held that the patent to Lot 3 carried title to the gore or strip of land. This case was quoted with approval by the Supreme Court of the United States in *Mitchel vs. Smale,* 140 U. S. 406. The case is based on the principle that, where a stream is meandered on a survey, and the plat shows no surveyed land between the meander line and the water, but that the surveyed land fronts the stream, a patent for the land carries all land between the meandered line and the water.

That of *Hardin vs. Jordan,* 140 U. S. 371, is identically this case. As shown by the statement of the case on page 375, the meander line of the lake was carried across the base of a ridge of land, projecting out from one of the sections fronting the lake into the lake 220 rods, being of varying width and elevation, and covered with timber—oak, hickory, elm, ash, poplar. linden and hackberry—three feet in diameter and under, the width of said ridge, limiting it to dry land at an ordinary stage of water, being over twenty-eight rods at the north and of varying width. The survey and the plat of the section from which this projection went out into the lake showed that the section fronted the lake. The Court held that the properties lying between the meander line across its base and the water of the lake were covered by the patent.

That of *Mitchel vs. Smale,* 140 U. S. 406, is identically this case. It also involved a projecting tongue of land cut off by a meander line and projecting from a lot fronting a lake, the plat of the survey of such lot showing that the land fronted on the lake.

That of *Grand Rapids and Indiana R. R. Co. vs. Butler*, 159 U. S. 87, involved an island, not shown on the plat of the Government survey. The Court held that the island passed under a patent from the United States for the adjoining riparian lands. The Court quoted and confirmed the two preceding cases. The same ruling was made in *U. S. vs. Chandler-Dunbar Co.*, 209 U. S. 447.

We particularly call the attention of the Court to what the Court says in *Mitchel vs. Smale* at page 472:

> "Our general views with regard to the effect of patents granted for lands around the margin of a non-navigable lake, and shown by the plat referred to therein to bind on the lake, were expressed in the preceding case of *Hardin vs. Jordan*, and need not be repeated here. We think it a great hardship, and one not to be endured, for the Government officers to make new surveys and grants of the beds of such lakes after selling and granting the lands bordering thereon, or represented so to be. It is nothing more nor less than taking from the first grantee a most valuable, and often *the* most valuable, part of his grant. Plenty of speculators will always be found, as such property increases in value, to enter it and deprive the proper owner of its enjoyment; and to place such persons in possession under a new survey and grant, and put the original grantee of the adjoining property to his action of ejectment and plenary proof of his own title, is a cause of vexatious litigation which ought not to be created or sanctioned. The pretense for making such surveys, arising from the fact that strips and tongues of land are found to project into the water beyond the meander line run for the purpose of getting its general contour, and of measuring the quantity to be paid for, will always exist, since such irregular projections do always, or in most cases, exist. The difficulty of following the

edge or margin of such projections, and all the various sinuosities of the water line, is the very occasion and cause of running the meander line, which produces an average result closely approximating to the truth as to the quantity of upland contained in the fractional lots bordering on the lake or stream. The official plat made from such survey does not show the meander line, but shows the general form of the lake deduced therefrom, and the surrounding fractional lots adjoining and bordering on the same. The patents when issued refer to this plat for identification of the lots conveyed, and are equivalent to and have the legal effect of a declaration that they extend to and are bounded by the lake or stream. Such lake or stream itself, as a natural object or monument, is virtually and truly one of the calls of the description or boundary of the premises conveyed; and all the legal consequences of such a boundary, in the matter of riparian rights and title to land under water, regularly follow.

"We do not mean to say that, in running a pretended meander line, the surveyor may not make a plain and obvious mistake, or be guilty of a palpable fraud; in which case the Government would have the right to recall the survey and have it corrected by the Courts or in some other way. Cases have happened in which by mistake the meander line described by a surveyor in the field notes of his survey did not approach the water line intended to be portrayed. Such mistakes, of course, do not bind the Government. Nor do we mean to say that, in granting lands bordering on a non-navigable lake or stream, the authorities might not formerly, by express words, have limited the granted premises to the water's edge, and received the right to survey and grant out the lake or river bottom to other parties. But since the grant to the respective States

of all swamp and overflowed lands therein this cannot be done.

"In the present case it cannot be seriously contended that any palpable mistake was made, or that any fraud was committed, by the surveyor who made the survey in 1834-5. It is apparent from the finding of facts that the lake in question is subject to considerable changes in the height and depth of the water therein. A *datum*, or bench mark, is used in Cook County, Illinois (where the premises in question are situated), as a standard of comparison for the height of water in Lake Michigan. Of course, the height of water in Wolf Lake is affected by that of Lake Michigan, since they are connected by two different outlets. The finding of facts states that the level of water in the lake in question when the Government survey was made in 1834-5 was 2.2 feet above the *datum*, and four-tenths of a foot above the average level of Lake Michigan, which is 1.8 feet above *datum*. But it also states that Lake Michigan at times rises to five feet above *datum*, which would cause the lake in question to rise to a level of 2.8 feet (or nearly three feet) higher than it was when the Government survey was made. At such times, of course, very little of the said projecting tongue of land would be visible. But, whether so or not, it would not alter the case. The existence of such projecting tongue is entirely consistent with the water or lake being the natural boundary of the plaintiff's land, which would include the said projection, if necessary, in order to reach the said boundary. It has been decided again and again that the meander line is not a boundary, but that the body of water whose margin is meandered is the true boundary. (*Railroad Co. vs. Schurmeir*, 7 Wall. 272; *Jeffries vs. East Omaha Land Co.*, 134 U. S. 178; *Middleton vs. Pritchard*, 3 Scam. 510; *Canal Trustees vs. Haven*, 5 Gilm. 548, 558; *Houck vs. Yates*,

82 Ill. 179; *Fuller vs. Dauphin*, 124 Ill. 542; *Boorman vs. Sunnachs*, 42 Wis. 235; *Pere Marquette Boom Co. vs. Adams*, 44 Mich. 403; *Clute vs. Fisher*, 65 Mich. 48; *Ridgeway vs. Ludlow*, 58 Ind. 249; *Kraut vs. Crawford*, 18 Iowa, 549; *Forsythe vs. Smale*, 7 Bissell, 201.) The case last cited (*Forsythe vs. Smale*) presented the very case of a tongue of land projecting beyond the meander line into Lake George, a small lake in Indiana, situated to the east of Wolf Lake, and connected therewith. It is cited and commented on in the opinion in *Hardin vs. Jordan*. In conclusion, our view on this part of the case is that the patent to Dewitt conveyed, and the plaintiff is entitled to, all of the fractional southwest quarter of Section 20 from its northern boundary line extending southwardly to the actual water line of the lake, wherever that may be, with the riparian rights incident to such position."

And so in this case there is absolutely nothing on which to base any claim that the Bristol survey was fraudulent. It cannot be contested that physical conditions around Wilson's Point were fundamentally different in 1871 from what they were in 1910, thirty-nine years later. It is difficult to reconstruct the then conditions owing to the large changes and variations in the water level of James Bayou.

V.

The law is settled that the grants of the Government of the United States for lands bounded on streams and other waters, without any reservation or restriction of terms, are to be construed, *as to their effect*, according to the law of the State in which the lands lie.

Hardin vs. Jordan, 140 U. S. 371; *Whitaker vs. McBride*, 197 U. S., and authorities there cited.

This doctrine does not mean that you look to the laws of the State to determine whether the grant of the United States is one bounded by a stream, or lake, or other waters. That is determined by the terms of the Federal grant itself. But it means that if the Federal grant by its terms makes the land included in the grant a riparian grant, then the laws of the State where the land lies determine what the rights of the riparian grantee are. For instance, if the riparian rights under the State law stop at the low-water mark, or if they go to the middle of the stream, or if they vary according as the stream is navigable or non-navigable, or if they cover rights of alluvion or dereliction, or if they extend to islands that exist in the stream at the time of the grant or that thereafter form in the stream, then the Federal riparian grant is interpreted, as to its effect, by the local law. These principles are illustrated by the following cases, quoted above:

Whitaker vs. McBride, 197 U. S. 510; *Grand Rapids & Ind. R. R. vs. Butler,* 159 U. S. 87; *U. S. vs. Chandler-Dunbar Co.,* 209 U. S. 447.

Therefore, the grant of the United States in this case and the official documents on which it is based are alone to be examined to determine whether it was the intention of the United States to make the grant bounded by the waters of James Bayou.

There can be no doubt as to how the patent and the plat of survey made part of the patent are to be construed. The plat not only shows that the boundaries of Lot 1 on the east and north are the waters of James Bayou. Those waters are meandered on the face of the plat, and the calls of the meander line, as set forth in the field notes, are given in detail on the plat itself.

The action of the Supreme Court of Louisiana in ignoring this plat and the meander line thereon delineated is purely arbitrary. The plat shows, and the field notes show, that the line in question was a meander line, and not a boundary line, and was intended to be a meander line by the grantor; and yet the Court declares it to be a boundary line, and, hence, necessarily so intended to be a boundary line by the Government of the United States, the author of plaintiff's grant.

The Court says that it cannot consider this line as a meander line, and gives no reason for its failure so to consider it; but adds, "particularly in view of the admission of the plaintiff that the land in controversy is high land, and was high land at the date that Bristol made his survey in 1871." (Rec., p. 129.)

This admission must be interpreted with reference to the issue in this case—*i. e.*, the right of the plaintiff to the possession of the spur of high land projecting north from the meander line as located by the surveyor. This spur was not figured on the plat. It was cut off by the surveyor and ignored. The meander line was run across its base, as in the cases above quoted. Nor was the admission intended to refer to the flat swamp lying adjacent to the edges of James Bayou, which go under water at ordinary high water, and are really part of the bed of James Bayou. The extent of these flat swamp lands had evidently largely increased since 1871 by the recession of the waters of the bayou, the extent of which recession has been indicated above.

The intention of the grantor, the Government of the United States, as to whether this line should be a meander line or a boundary line *is paramount in this case.* The Government grant was based on the intention of the Govern-

ment in making it, and it must necessarily be interpreted with reference to that intention. The grantor has never receded from that intention, as expressed in its grant. It has never claimed that the line in question was a boundary and not a meander line, or that there was any error or fraud in the location of the line as a meander line. We concede that the Government of the United States might, for proper cause and under proper conditions, correct this survey, if it needs correction, but it is entirely beyond the right of the defendants to attack this survey, and the patent based on it, collaterally, and to say that what the Government of the United States intended to be, and declared to be, a meander line is a boundary line; because it is the settled jurisprudence of this Court that official surveys and patents of the United States cannot be attacked collaterally or in litigations between private persons.

Stoneroad vs. Stoneroad, 158 U. S. 240; *Russell vs. Maxwell Land Grant Co.,* 158 U. S. 253; *Horne vs. Smith,* 159 U. S. 40; *Whitaker vs. McBride,* 197 U. S. 510.

We submit that it is idle to say that when an official plat and field notes of a survey show that a line is a meander line, and not a boundary line, and a patent has been issued granting land according to the plat, it is not a collateral attack on the survey and the patent to claim that the meander line is a boundary line.

The Court disposes of the official plat by saying:

> "Bristol made no map or plat, and the one made by the draftsman in the Land Office is very small, and apparently without reference to scale." (Rec., p. 130.)

The answer to this is that the platting of United States surveys is always done in the Surveyor General's office, to whom the field notes are transmitted, and that these plats are not always drawn to scale. The official map of Township 20 North, Range 16 West, which is plan No. 1 in the appendix to this brief, is not drawn to any named scale. Indeed, we can assert that we have seen any number of official plats of United States surveys not drawn to any scale.

Even though small, the official plat (plan No. II in appendix to brief) is singularly clear and distinct, and contains on its face the measurements of all the main lines, according to the field notes.

VI.

The decision of the Supreme Court of Louisiana contravenes all of the rights and claims of the plaintiff, as established under the laws of the United States, as interpreted by this Court.

We, therefore, ask that the judgment of the Supreme Court of Louisiana be reversed and the cause remanded to that Court with instructions to affirm the judgment of the District Court of Caddo Parish.

Respectfully submitted,

EDGAR H. FARRAR,
Counsel for Plaintiff in Error.

FILED
JAN 21 1915
JAMES D. MAHER

Supreme Court of the United States

OCTOBER TERM, 1914.

No. 165.

THE PRODUCERS' OIL COMPANY,
Plaintiff in Error,

versus

LYDIA HANZEN, SAM W. MASON, DILLARD P. EUBANK, ROBERT L. STRINGFELLOW and EARL H. BARNES.

APPENDIX TO BRIEF OF PLAINTIFF IN ERROR, CONTAINING PLANS, OFFERED IN EVIDENCE AND BROUGHT UP IN ORIGINAL.

HAUSER PRINTING CO., "The Legal Printers," 720 Poydras St., N. O., La.

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APPENDIX TO BRIEF OF PLAINTIFF IN ERROR, CONTAINING PLANS, OFFERED IN EVIDENCE AND BROUGHT UP IN ORIGINAL.

No. I.

This is the official Government plan of Township 20 North, Range 16 West, as based on the survey of Williamson Jones, Terrell & Warren, and A. W. Warren, prior to 1839.

It shows no Sections 4 or 9 and an incomplete survey of Sections 10 and 3.

In other words, according to this map, the waters of Ferry Lake would cover the location of the most of the west half of Sections 3 and 10 and the whole of Section 4.

TOO

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No. II.

This is the official Government map of the survey of Byron Bradley Bristol, in 1871, of those portions of Sections 4, 9 and 10 which were not shown in the official map No. 1 of 1839, and the space occupied by which was there delineated as consisting of open water of Ferry's Lake.

It is the official plat, according to which the United States sold Lots 1 and 2 of Section 4, and gave to Piets, under whom plaintiff holds, a patent for Lots 1 and 2 of Section 4, **"according to the Official Plat of the survey of said lands returned to the General Land Office, by the Surveyor General."**

This plat shows that **Wilson's Point,** or that part thereof covered by Lots 1 and 2 of Section 4, to be bounded on the north, east and west by the waters of James Bayou, or "Ferry Lake," as it is called, admitted to be a navigable stream.

The plat shows the meander line all around the point, and the Table of this Traverse, **"in front of Section 4,"** is set forth on the face of the plat.

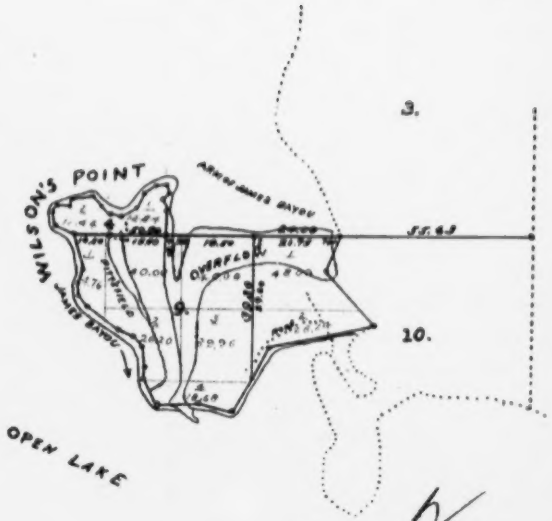
This "Table of Traverse" conforms to the field notes of the survey of "Wilson's Point," where the items are set forth as **"Meanders of the left Bank of James Bayou."** (Rec., pp. 29, 30.)

Duplicate sent to General Land Office August 29/71
" " Registers " " " "
Triplicat " State " " Sept 29/71

T. 20 N. R. 16 W. *North Western Dist.ct, La.*

TABLE OF TRAVERSE.											
In front of Sec. 4.		N.39½ W.	5.00	S.24° W.	4.00	S.75° E.	10.00
N. 2° E.	6.00	N.31½ W.	3.50	South	5.00	N.30 E.	11.00
N.15° W.	5.00	S.34° W.	6.00	S.31° E.	4.00	In front of Sec. 10	
N.45½ E.	2.50	S.15° W.	1.50	S.51 E.	11.00	N. 60 E.	9.50
N.16° W.	2.50	N.83° W.	5.00	S.65 E.	5.00	N.78 E.	30.00
S.86½ W.	2.50	S.39 W.	2.00	S.36 E.	4.00	N.45° W.	20.00
S.67° W.	4.50	S 8° E.	4.50	S.3° E.	5.00	N.20° E.	10.00
S.33½ W.	4.50	S.56° E.	3.50	S.11° W.	3.00		
S.63° W.	4.50	In front of Sec. 9.		S.24½ E.	9.00		
N.81° W.	2.00	S.22½ E.	10.00	N.82½ E.	11.00		

See field notes N.47½ E →



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Variation of the Needle 8°12' East.

Byron Bradley Bristol, D.S. under contract of June 26th 1871, surveyed all the lines & traverse of Sections 4. 9 & 10 as herein represented on the 20th to 24th July 1871.

Swamp Lands have been selected under the Act of March 2nd 1849. as List herewith transmitted.

Surveyor Generals Office.
New Orleans La. 18th August 1871.

The above Diagram, exhibiting of T. 20 N. R. 16 W. North Eastern Dist. La, has been examined and compared with the field notes thereof now on file in this office, found correct & is hereby approved.

(signed) E. H. Foster
Surveyor General, La.

FILED IN EVIDENCE IN SUIT
NUMBER 13843
DATE 12/19/10
A. J. Gardner
DEPUTY CLERK

E. 11 $.

No. III.

This is a map offered by defendants and prepared by one of them (Barnes), who is an engineer. It purports to show the location of the pretended mineral claim of defendants with reference to the official Bristol survey shown in No. II. It contains contour lines, based on the theory that mean low water is 68 and mean high water in James Bayou is 70.80, or a difference of only 2.8 feet, when the evidence shows that it is more than 10 feet.

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No. IV.

This is a map of survey made by Williams & Hoffer, surveyors, and prepared by Hoffer from Williams' notes, made in May and June, 1910. It shows the mineral claim of defendants, marked in brown. It also shows the water line of James Bayou at the time of the survey and the water line on December 16, 1910, when the water was very low. It shows also contour lines marked in red and yellow, based on the theory that the mean water heighth in the lake is 100. This map differs fundamentally from Barnes' map No. III as to the location of the Cotton Shed Arm of James Bayou, and conforms in that respect to the Government Survey No. II. This map shows what a large portion of the mineral claim of defendants covers the bed of James Bayou.

CHART

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United States Supreme Court.

OCTOBER TERM, 1914.

No. 165.

THE PRODUCERS' OIL COMPANY,
Plaintiff in Error,

versus

LYDIA HANZEN *ET ALS.*,
Defendants in Error.

SUPPLEMENTAL BRIEF FOR PLAINTIFF IN ERROR.

This brief is written to call the attention of the Court to certain matters not fully discussed in the original brief.

I.

The Supreme Court of Louisiana starts out its opinion by misstating the origin and basis of plaintiff's claim to the land in dispute.

The plaintiff's title is designated in its petition as follows (Rec., p. 1):

> "That on July 6, 1874, the Government of the United States sold to Thomas H. Pitts, lots one and two of Section four of Township Twenty North, Range Sixteen West, situated in the Parish of Caddo, State of Louisiana, forming a projection of land surrounded on three sides by the waters of James Bayou, a navigable stream; that said Thomas H. Pitts went into possession of said land, at the time of said sale, and he and his successors in title remained in open and undisturbed possession thereof down to April 2, 1910; that on April 15, 1910, your petitioner, by notarial act recorded in Conveyance Office of Caddo Parish, in Book 63, page 394, purchased said property from J. S. Noel, *who held title and possession thereof under Thos. H. Pitts.*"

The Court says (Rec., p. 127):

> "Plaintiff traces its title to Alfred Wilson, February 21, 1858, when one of its vendors acquired 'all improvements lying on and about the following described land, to wit: The S. E. ¼ of the S. W. ¼ and the S. W. ¼ of the S. E. ¼ of Section No. 4' and other land in Section 9, Township 20, Range 16 W."

Ann Pitts, the vendee of Alfred Wilson's improvements, does not anywhere appear in the plaintiff's chain of title. She never had any title to this property at all, and never claimed any. She is not one of the plaintiff's vendors. Her name appears in this record only on page 24, in what purports to be an extract from Book L, page 420, of the Recorder's Office of Caddo Parish, recorded February 21, 1858, purporting to be a sale of improvements on certain

lands from Alfred Wilson to Ann Pitts. This extract was annexed to a letter from R. T. Buckner, the attorney of Stephen D. Pitts, directed to the United States Surveyor General of Louisiana, as a description of the land which Stephen D. Pitts was asking the United States Government to survey. Neither does Alfred Wilson appear anywhere in plaintiff's chain of title.

Having fallen into this error, the Court then proceeds to continue further in that error, as follows (Rec., p. 127):

> "Part of the land now claimed by plaintiff is in the S. E. ¼ and N. E. ¼ of the S. E. ¼ of Section 4. These portions of land do not appear to have been claimed by Alfred Wilson at the time he sold to Ann Pitts."

The land granted by the United States in Section 4 to Thos. H. Pitts, under whom alone the plaintiff claims, as appears by the official plat of the survey, consist of the fractional Southwest Quarter of the Southeast Quarter of Section 4 (described as Lot No. 1 of Section 4) and the fractional Southeast Quarter of the Southwest Quarter of Section 4 (described as Lot No. 2 of Section 4). This is the very land Pitts asked the survey of.

According to the official surveys of the United States, there is no other surveyable land in Section 4 except Lots 1 and 2. All of the balance of that section is shown to be covered by the waters of "James Bayou" and the "Cotton Shed Arm" of James Bayou.

II.

The map annexed to and reproduced in the printed record in this case in this court is not any part of the evi-

dence or record in this case. It was prepared by counsel for the defendants for use in oral argument in the Supreme Court of Louisiana, and is supposed to represent his idea as to how the *locus in quo* would be represented by the superposition on the Bristol official survey of 1871 of the maps of Barnes, the defendant surveyor, and the map of Williams. This superposition is purely fictitious, as appears from the following testimony of Barnes (Rec., pp. 65, 66) :

> Q. Mr. Barnes, are any of Mr. Bristol's corners discernable?
>
> A. No, sir; no evidence to show where his lines actually were, no corners or lines that you could trace.
>
> *By the Court:*
>
> Q. No starting point?
>
> A. I mean none of his marks; we had to run in there from a section further east and north.
>
> Q. Have you ever found anyone who had found Bristol's corners?
>
> A. No, sir; I do not know of any surveyors or anyone.
>
> Q. Did Mr. Williams claim to find any of Mr. Bristol's corners?
>
> A. I never heard of it if he did.
>
> Q. You know of any Government corners in Township 20, Range 16?
>
> A. No, sir; nor do I know of anyone else that knows one. I have heard that some one claimed a Government corner on the south line of Section 2, at the quarter corner.
>
> Q. Did you ever hear of anyone claiming to find one of Bristol's corners?
>
> A. No, sir.

According to Bristol's official survey, the following facts are patent, both on the plat and the field notes:

FIRST. *There was no surveyable land in Section 3 north of the section line dividng it from Section 10 and west of the meander line as marked in the previous official survey of 1839.* This meander line of 1839 is figured on the official plat of Bristol. At the point where this section line crosses the old meander line, Bristol located a meander corner between Sections 3 and 10, at a distance of 55.63 chains from the corner of Sections 2, 3, 10 and 11, from which his survey started—a corner which he claims to have found, and re-marked by a stake. (Rec., pp. 28, 29.) This meander corner was located in a slough bottom.

SECOND. *There was no surveyable land in Section 4 north of the section line dividng it from Section 9 and east of what would have been the location of the corner between the Southeast Quarter of the Southwest Quarter of Section 4 and the Southwest Quarter of the Southeast Quarter of Section 4.*

This corner is located on the plat, about the middle of the arm of James Bayou, which extends down into Section 9, and which is described in the field notes (Rec., p. 29) as a deep slough, full of green cypress; the eastern edge of which was 18.50 chains from the corner of Sections 3, 4, 9 and 10. That this slough or arm of James Bayou still exists, that it has a wide bed which goes and stays under water at the ordinary state of high water in James Bayou, and that it projects down into Section 9 abundantly appears by the testimony in the record, principally that adduced by the defendants.

THIRD. *The Section corner between Sections 3, 4, 9*

and 10 was set in a low bottom, one chain south of the arm of James Bayou.

The Barnes survey pretends to follow the line of Bristol's survey, which is obviously impossible from the above quoted testimony of Barnes. He never knew the location of the Bristol survey.

The Williams survey does not purport to follow any of the lines or corners of the Bristol official survey. Indeed it is nothing but a traverse of the water line of James Bayou as it existed in May-June, 1910. Upon the plat of this survey in suppositiously figured the lines of the Bristol survey. There is also figured upon it the traverse of the water line of the Cotton Shed Arm of James Bayou as it existed December 16, 1910, at a time when the water was four or five feet below the average stage of the water. (Test. of Hoffer, Rec., p. 43; Test. of Kane, p. 54.) There is also figured upon it the Barnes survey, platted from Barnes' notes.

It was alone with reference to this (what we may call) fictitious map, that the plaintiff's rights were adjudged, and the official plat of the United States, reference to which was embodied in the patent, was not used or referred to by the Supreme Court of Louisiana, and was duly referred to in a parenthetical remark.

In support of these statements we quote from the opinion of the Court (Rec., pp. 130, 131):

> "A glance at the annexed map, taken from the Williams and Barnes maps in the record [Bristol made no map or plat, and the one made by the draftsman in the Land Office is very small and apparently without reference to a scale] shows that the Bristol meander line does not purport to define the sinuosities of a stream; it is not represented as the border

> line of a stream; and it shows to a demonstration, that the meander line as actually run on the land on the east and northeast of Lot No. 1 is the boundary, and that a water course is not the boundary."

This official map of the United States, thus ignored by the Supreme Court of Louisiana, was the basis of the plaintiff's claim.

The plaintiff was entitled to read its title according to this official plat, referred to in the United States patent for identification of the land conveyed.

In *Hardin vs. Jordan*, 140 U. S., at p. 379, this Court said:

> "It will be observed that the Government surveys made in 1834-5, upon which the patent was issued, not only laid down a meander line next to the lake, but also described said lines as running 'along the margin of the lake,' and the plat of the survey, returned to the General and Local Land Offices, and referred to in the patent for identification of the land granted, exhibited the granted tracts as actually bordering upon the lake; and the lake itself on said plat was marked with the words 'Navigable Lake,' although the fact found by the Court is that the lake was not and is not a navigable lake, but a non-navigable fresh water lake or pond. The patent itself does not contain all the particulars of the survey, but the grant of the land is recited to be according to the official plat of the survey of said lands, returned to the Land Office by the Surveyor General, *thereby adopting the plat as a part of the instrument.*"

And so, in this case the field notes of the survey describe the "meanders of the left bank of James Bayou" (Rec.,

p. 29); these meanders are detailed in the plat, are there graphically represented as a meander line of the left bank of James Bayou, and the plat "*exhibits the granted tracts* (Lots one and two of Section four) *as actually bordering upon*" James Bayou, and the arm of James Bayou.

In *Mitchell vs. Smale*, 140 U. S., at p. 413, this Court said:

> "The official plat made from the survey does not show the meander line, but shows the general form of the lake deduced therefrom, and the surrounding fractional lots adjoining and bordering on the same. The patents when issued refer to this plat for identification of the lots conveyed, *and are equivalent to and have the legal effect of a declaration that they extend to and are bounded by the lake or stream. Such lake or stream itself, as a natural object or monument, is virtually and truly one of the calls of the description or boundary of the premises conveyed.*"

The Supreme Court of Louisiana wipes these two cases out of consideration upon the supposition that they were based on the fact that the Government plat did not show any meander line. This is a total misconception of the cases. The decision in both cases was based on the fact that, although no meander line was marked on the official plat, made by reference part of the patent, yet inasmuch as these plats showed the lands sold by the Government to be bounded by the lake, the waters of the lake and not the meander line shown in the notes of the survey were the boundary of the lands so sold, and, consequently, the spurs of land, actually existing at the time of the survey and shown in the notes of the survey to have been cut off by the meander line as run, were conveyed by the patent.

The Supreme Court of Louisiana also excludes these cases from consideration because it says that the "question there involved was not whether the patent carried the title to the water line, but whether it carried it to the middle of the lake." The fundamental question in both cases was: "Is the patentee a riparian proprietor by virtue of his grant from the United States?" And that is the fundamental question in the case at bar. If the plaintiffs in those two cases were riparian proprietors under their Federal grant, the question then arose, how far, under the riparian law of the State of Illinois, does their right extend?—to the low-water mark or to the middle of the lake?

Having thus disposed of *Hardin vs. Jordan*, and *Mitchell vs. Smale*, the Supreme Court of Louisiana ignored *R. R. Co. vs. Schurmeir*, 7 Wall. 272, and *Forsyth vs. Smale*, 7 Biss. 201, although the later case had been commented upon and approved by this Court in both the *Hardin* and the *Mitchell cases*.

III.

All land formed by the recession of the waters of James Bayou belong, under the law of Louisiana, to the riparian proprietor, because Articles 509 and 510 of the Revised Civil Code of that State provide:

> "ART. 509. The accretions which are formed successively and imperceptibly to any soil situated on the shore of a river or other stream are called alluvian.
>
> "The alluvian belongs to the owner of the soil situated on the edge of the water, whether it be a river or stream, and whether the same be navigable or not, who is bound to leave public that portion of the bank which is required by law for the public use."

> "ART. 510. The same rule applies to the derelictions formed by running water retiring imperceptibly from one of its shores and encroaching on the other; the owner of the land adjoining the shore which is left dry, has a right to the dereliction, nor can the owner of the opposite shore claim the land which he has lost. This right does not take place in case of derelictions of the sea."

Therefore, all flat and marsh lands which have been left bare by the retirement of the waters of James Bayou since the grant to Thos. H. Pitts in 1874, are the property of the plaintiff as riparian proprietor under the Federal grant to Pitts.

IV.

We are at a loss to understand with what object and purpose the Supreme Court of Louisiana referred to the Louisiana law of batture and quoted extracts from three of its opinions, interpreting certain deeds between individuals as to whether or not those deeds conveyed an existing "batture" at the time they were made. There is not and could not be any question of "batture" in this case, as James Bayou is not a sediment-bearing stream, and no batture or elevation of its bed, by a gradual deposit of sediment, so high as to make it capable of private ownership, could ever arise. There was no such question raised or argued in this case. No such authorities were cited to the Court.

It has been settled in Louisiana since the great case of *Morgan vs. Livingston*, 6 Martin, 220, that a deed describing land as *"frente al rio"* in Spanish, or *"face au fleure"* in French, or "front to the river" in English, conveyed a Riparian Estate.

In the case quoted by the Court (*Livingston vs. Herman*, 9 Martin, 656, it was held that the words in a deed "*frente a la levée*," were not the equal to "*frente al rio*," and did not create a riparian estate in the sense that it conveyed to the purchaser batture beyond the levee, which was capable at the time of the sale of private ownership. The same doctrine has been applied as to the sale of city lots sold according to a plan, originally making them front the river, and subsequently sold by the same description at a time when a batture capable of private ownership (*i. e.*, removed from the public servitude placed by law on all riparian lands formerly constituting the banks of the river) existed in front of the lots.

Such batture having thus become a separate estate from the original lot, a sale of the original lot by its original description of "front to the river" will not convey the batture unless the batture is specially mentioned.

Possibly it was the purpose of the Court, in referring to this exceptional law of batture, to apply it to an interpretation of a patent of the United States showing by its terms that it was making a riparian grant, or to appy this doctrine to the facts of this case; because, after quoting extracts from the batture cases, the Court proceeds:

> "In the patent from the United States to plaintiff's authors in title, nothing was said with reference to the high land at the date that Bristol made his survey in 1871, embracing a body of land of forty to eighty-seven acres."

We again call the attention of the Court to this repetition by the Supreme Court of Louisiana of its misunderstanding of plaintiff's case. The high land in dispute is only the

spur cut off by Bristol, running north from Lot 1, and mentioned in his field notes, and not figured in the official plat on which the Government grant is based, and the low land in dispute is part of the bed of James Bayou, lying between the spur of high land and the water line of James Bayou, there never having been made any estimate of how much land is in dispute, even by Barnes, the defendant surveyor. (Rec., p. 83.) Indeed, no such estimate could be made by anybody, inasmuch as the proper location of the Bristol meander line has never been made. The eighty-seven acres mentioned by the Court is the estimate of the whole acreage in the defendant's mineral claim.

That the Court ought well to have understood what the admission as to high land meant—*i. e.*, to the spur on which defendants located their well and discovered oil—is shown by the Court's own finding (Rec., p. 133) to the effect that

> "the evidence in the record in this case, aside from the admissions of record, show that there was and is a large quantity of swamp or marsh land on the east and north of the Bristol meander line."

While this finding is true, the photographs of the *locus in quo* show that, apart from the high spur in question, all this swamp or marsh land is now, or was at the time of the survey in 1871, a part of the bed of James Bayou, and within its banks, as defined by the laws of Louisiana, the title to which by that law passed to the riparian proprietor.

VI.

In order to interpret the Government survey and the Government plat, which is the basis of the plaintiff's title, in the light of the present physical facts, that survey must be

accurately re-established, its lines and corners located, and, in addition to this, the then condition as to the permanent and variable water line of James Bayou must be established by Government authority. No light can be gotten in this case by the comparison of the conflicting water line and contour maps of Barnes and Williams.

It is for this reason that we insist so strongly at this time on the propositoin that, for the purposes of this case—a possessory action where no question of title is involved—it was obligatory on the Supreme Court of Louisiana to treat the Government survey, the Government plat and the Government patent as correct, and to treat the meander line shown on the plat as the meander line of the left bank of James Bayou, which both the field notes and the official plat show it was intended by the Government to be. The refusal of the Supreme Court of Louisiana so to act, and its practical ignoring of both the official plat and the field notes of the Government survey, is the fundamental error in this case which will compel a reversal and a reinstatement of the judgment of the District Court of Caddo Parish.

Respectfully submitted,

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Counsel for Plaintiff in Error.

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IN THE

Supreme Court of the United States

No. 165 OCTOBER TERM, 1914.

THE PRODUCERS OIL COMPANY, Plaintiff in Error,

vs.

LYDIA HANZEN, SAM W. MASON, DILLARD P. EUBANK, ROBERT L. STRINGFELLOW and EARL H. BARNES, Defendants in Error.

In Error to the Supreme Court of the State of Louisiana.

BRIEF ON BEHALF OF DEFENDANTS IN ERROR.

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PURPOSE OF THE BRIEF.

This brief is to prove:

(I) That the Bristol survey was made to enable Pitts to secure patents for 160 acres of land, of which land Pitts was in possession;

That on this—Pitts' land—were the house, corn field, farm trail and improvements of Pitts;

That the irregularity of the Bristol lines was to cover these improvements and this land; and did not meander the banks of Jeems Bayou;

(II) That the plaintiff in error, claiming as it does under the patent issued by the United States to Pitts, must show that the United States intended by such patent to convey to Pitts not only Lot No. One so exactly described as containing twelve and 84/100 acres on the Land Office plat incorporated in the patent, but, *in addition*, the land in controversy, amounting to some forty (40) to eighty-seven (87) acres more, lying wholly outside the boundary lines of Lot No. One as shown on said plat; and this the plaintiff has failed to do;

(III) That the title to the land in dispute is not in the plaintiff in error.

IN THE

Supreme Court of the United States

No. 165 OCTOBER TERM, 1914.

THE PRODUCERS OIL COMPANY, Plaintiff in Error,

vs.

LYDIA HANZEN, SAM W. MASON, DILLARD P. EUBANK, ROBERT L. STRINGFELLOW and EARL H. BARNES, Defendants in Error.

In Error to the Supreme Court of the State of Louisiana.

BRIEF ON BEHALF OF DEFENDANTS IN ERROR.

Statement of the Case.

The land in controversy is described in the petition of the plaintiff as (Record, p. 2)—

"*part* of lot *No. 1* of Sec. 4, T. 20, N. R. 16 West."

It defines the "part" (Record, 1) as that which the *defendants,* on April 2, 1910,

"entered upon"

—and—

"took possession thereof by building a wire fence around it and by placing a keeper thereon."

That when the *plaintiff* came to take—

"actual possession under its deed" (Rec. 1), which was dated April 15, 1910, it found—

"the defendants in possession as aforesaid."

The *whole* of said lot *No. 1,* Section four (4), as surveyed in 1871 by Bristol for Pitts, the patentee, and platted in Washington from Bristol's notes (Record, p. 136) contained only twelve and 84/100 (12.84) acres.

The quantity of land the plaintiff now sues for is not described in the petition but is, the plaintiff says, forty (40) acres, and the defendants say, eighty-seven (87) acres (Record, pp. 67, 71, 83, 110), *in addition* to those twelve and 84/100 (12.84) acres, and plaintiff claims this surplus as part of Lot No. One, Section four (4).

This land in dispute lies between the *boundary* line run by Bristol and platted from his notes and the water of James Bayou. It was, when the survey of 1871 was made, and ever since has been, *high land.*

The answer of the defendants says that on April 2, 1910, the land in dispute was the property of the United States, and on that date the defendants lawfully on this property (Rec., 3)—

> "located under the laws of the United States relative to the location of mining lands and upon which they have made a discovery of oil and gas, and are, therefore, entitled to the full use and enjoyment and to a patent from the United States."

The question in the case is:

> Is that forty to eighty-seven acres *part* of Lot No. 1 in Section four (4), which lot the United States, by its patent dated 1892, sold and conveyed to Thomas Pitts, as containing only 12.84 acres?

The plaintiff claims that this extra acreage is part of lot No. 1 and the United States did convey it to Pitts by its patent; that lot No. 1 *really* contained 12.84 acres *plus* this forty to eighty-seven acres additional. And it reaches this conclusion by alleging that the boundary line of that lot by the Bristol survey was *really* the waters of James Bayou and *not* the actual boundary line run by Bristol and platted on the map; that the boundary line of lot No. 1 was really a meander of Jeems Bayou, and that the United States, by its patent to Pitts for lot No. 1, intended to convey not only the 12.84 acres marked in lot No. 1, but in addition the forty (40) to eighty-seven (87) acres additional outside of the actual boundary line run and plotted.

The defendants deny that the land is part of lot No. 1, and deny that the United States conveyed it to Pitts; say that the Bristol traverse lines were the *actual* boundary lines of Pitts' survey; that lot No. 1 contained *only* 12.84 acres; that this was all the patent of the United States conveyed to Pitts; it was all Pitts paid for and all he claimed; that neither Pitts nor Noel nor any owner under the Pitts' patent, prior to the plaintiff in 1910, *ever claimed* that these forty (40) to eighty-seven (87) acres were part of lot No. 1, or were ever in possession of it or any part thereof.

Not only this: but if, as a fact, Bristol's line is a true meander line of the left bank of Jeems Bayou, it is such for the whole of his survey, and therefore Pitts would have received from the United States not only the 123.87 acres contained in the lots identified in the patent, but, in addition—

(a) the 40 to 87 acres on the north;

and also

(b) many additional acres on the south.

The lots in the Bristol plot conveyed by patent to Pitts are one and two (1 and 2) in Section Four (4), and lots 1, 2, 3 and 4 in Section Nine (9). These lots cover the north, east, west and south lines of Bristol's so-called meander lines, and *if* the acreage between the lines of lot one (1) and Jeems Bayou passed under the patent to Pitts, so also would the acreage between the other lot lines and Jeems Bayou.

The result would be this:

The total acreage *inside* the lot lines is 123.88 acres.

If you add that between the lot lines and Jeems Bayou, then you add—

for lot one (1) from 40 to 87 acres.

The accurate amount for the balance to the west of the lots has not been calculated, but it would run largely over fifty acres more.

Now if you add to this the 300 acres of land, according to the Barbour survey, south of the lots in Section Nine (9) and adjoining in that direction Jeems Bayou, you would have the patent of 1892 conveying over 500 acres to Pitts instead of 123.88 acres.

NATURE OF THE ACTION.

This action is a *possessory* one under the laws of Louisiana, and to recover the plaintiff must show that it is entitled to the *actual* possession. It *admits* when it bought (April 15, 1910), that the defendants were in *actual exclusive* possession; that neither Noel, from whom it bought, nor any predecessor in the title was ever in actual possession of that land, but it claims that as Pitts and Noel, the predecessors in title, were, and the plaintiff now is, the actual owner of the title and the property, *that* fact gave it constructive possession which enables it to maintain the action.

Obviously, then, if the plaintiff does not have title to the land in dispute,—does not own the same,—it cannot maintain its claim to *constructive* possession and therefore cannot recover.

Without title, the plaintiff has no case whatever.

DECISION IN THE STATE COURTS OF LOUISIANA.

This action was brought in the First Judicial District Court in the Parish of Caddo, State of Louisiana; was decided in the lower court in favor of the plaintiff; was taken to the Supreme Court of Louisiana by the defendants and there decided in favor of the defendants.

The majority opinion, citing and following the decisions of this court in the cases of *Railroad Co. vs. Schurmeir,* 7 Wall., 272, 286; *Niles vs. Cedar Point Club,* 175 U. S., 300, and others, and after examining

the cases cited by the plaintiff, of *Hardin vs. Jordan,* 140 U. S., 371, and *Mitchell vs. Smale,* 140 U. S., 406, held as follows:

(a) Tested by those decisions, the so-called meander line of Bristol, upon which the plaintiff relies, fails in all respects;

(b) That the Bristol map made by the Land Office does not—

> "purport to define the sinuosities of a stream; it is not represented as the border line of a stream;" (Rec., p. 131)

(c) That map shows to a demonstration—

> "that the meander line, as actually run on the land on the east and northeast of Lot No. 1, is the boundary, and that a water course is not the boundary;" (Rec., p. 131)

(d) That the plaintiff—

> "has no title to the land in question whatever;" (Rec., p. 131)

(e) It is quite clear under numerous cases cited that—

> "the defendants * * * are not mere trespassers," (Rec., p. 133)

but are lawfully in possession of the land in dispute, citing *Dall vs. Raunheim,* 132 U. S., 260; *Creede & Cripple Creek Co. vs. Uinta Co.,* 196 U. S., 337, and other authorities.

(f) The Court said:

> "We say here that if the eastern and northern boundaries of lot No. 1 were taken out and other boundaries substi-

tuted, so as to reach James Bayou, plaintiff would get three to seven fold more land than was actually mentioned and described in the patent conveying this lot, or than its ancestor in title supposed he was purchasing, or than he actually paid for." (Rec., p. 135.)

Judge Provosty dissented, holding as the action was a possessory one, that under the state laws of Louisiana the defendants could not question the plaintiff's title *and* that the defendants were mere trespassers and the plaintiff had color of title.

FACTS.

The plaintiff's chain of title is as follows:

In 1858 (Rec., p. 24), Alfred Wilson sold to Ann Pitts—

"All the improvement lying on and about the following described land, to wit: The S. E. ¼ of the S. W. ¼ and the S. W. ¼ of the S. E. ¼ of Sect. No. 4, and East ½ of N. W. ¼ and West ½ of N. E. ¼ of Sect. (9) Nine, Township 20, Range 16, West of Northwestern land District of Louisiana, containing *160* acres more or less * * ."

Thomas H. Pitts obtained an 1812 old soldier's warrant for one hundred twenty (120) acres of land, which he *located* on lots One, Two, Three and Four of Section Nine, and lots numbered One and Two of Sec-

tion Four, in Township Twenty, North of Range Sixteen, West of Louisiana,—

> "containing One hundred and twenty-three acres and eighty-eight hundredths of an acre, according to the official plat of the survey of said lands returned to the General Land Office by the Surveyor General." (Rec., p. 21.)

For these parcels of land a patent dated February 18, 1892, was issued to Pitts (Rec., p. 21). The description just cited was contained in that patent. The quantity, the patent says, is shown by the plat, which is known in this case as the Bristol Survey made in 1871, and that plat shows the one hundred and twenty-three acres and eighty-eight hundredths of an acre made up as follows (Rec., p. 28):

Section 4:		
	Lot 1,	*12.84*
	Lot 2,	11.44
Section 9:		
	Lot 1,	14.76
	Lot 2,	26.20
	Lot 3,	39.96
	Lot 4,	18.68
	Total,	123.88

This was an excess acreage of three and 88/100 (3.88) acres, and for this Pitts paid one and 25/100 ($1.25) dollars per acre, for the patent would not have been issued to him unless he had done so.

(See *U. S. Revised Stat.,* Sec. 2415.)

But Wilson, as we have seen, had sold to Ann Pitts One hundred and sixty (160) acres, and this total was made up by Pitts buying from the United States in 1878 and receiving a patent for Forty (40) acres, described in the patent to Pitts as—

> "the Northwest quarter of the Northeast quarter of Section Nine, in Township Twenty North, of Range Sixteen West, * * * containing Forty Acres, according to the official plat of the survey of the said lands, returned to the General Land Office by the Surveyor General." (Rec., p. 20.)

This made up the total of 163.88 acres which was all Pitts bought, all Pitts paid for and all the United States sold to Pitts.

The title *descended* from Pitts to the Producers Oil Company as follows:

Pitts sold in 1880 to Walsch these One hundred sixty-three and 88/100 (163.88) acres, described in the Notarial transfer as (Rec., p. 19):

> "The Northwest quarter of the Northeast quarter of Section No. Nine (9), in Township Twenty (20), Range Sixteen (16), containing Forty Acres, also lots Nos. One, Two, Three and Four, (1, 2, 3, 4) in fraction Section No. Nine (9), in same Township and Range, Lots One and Two (1 and 2) in Section Four, same Township and Range, containing one hundred and twenty-three and 88/100 (123.88) acres, in all one hundred sixty-three and 88/100 (163.88) acres, together with all buildings and improvements thereon, situated in Caddo Parish, State of Louisiana."

Walsch, on February 15, 1884, sold to James S. Noel (Rec., p. 17),—

> "The place known as the Wilson Point in Caddo Parish, La. Bought of E. Austion and the heirs of T. H. Pitts, deceased, as per family meeting and numbered as follows: The Northwest quarter of the Northeast quarter of Section Nine (9), Township Twenty (20), Range Sixteen (16). Also Lots One, Two, Three and Four (1, 2, 3, 4) in fractional Section No. Nine (9), and lots One and Two (1 and 2) in Section of Four (4), Township Twenty (20), Range Sixteen (16), containing in all One hundred and Sixty-three and 88/100 acres, all in Caddo Parish, Louisiana, together with all buildings and improvements thereon."

Noel, on April 15, 1910, sold the same property to the Producers Oil Company, the plaintiff in this case, the description being (Record, p. 16):

> "Lots One and Two (1 and 2) in Section Four (4), and Lots One and Two, Three and Four (4) of Section Nine (9), and the Northwest quarter of the Northeast quarter of Section Nine (9), all in Township Twenty (20) North, Range Sixteen (16) West, in the Parish of Caddo, State of Louisiana, containing 163.88 acres, more or less."

Each one of these conveyances asserts that the acreage sold is 163.88 acres, and the *only* one of them which adds any words of qualification is that transfer from Noel to the Producers Oil Company, where the words—

"more or less"

are added.

ADMISSIONS.

There is filed of record in the case, signed by the counsel on each side, a stipulation of facts as follows (Record, p. 39):

"Filed in evidence and marked Exhibit 'G.'

"It is admitted by both parties that J. S. Noel was in possession, as owner, from the date of his purchase in 1880, to the sale to the plaintiffs of the property known as the Wilson's Point place, his corporeal possession being limited on the East and North by the Bristol meander line, and said Noel never exercised any acts of corporal possession, or was ever in occupancy of any land in Section Four, *East of or outside of the said meander line, or of any of the land in controversy.* This is not intended to apply to any other land West of the land in controversy. That Noel's possession was vested by act of purchase and continued by occupancy in the Plaintiffs.

"It is further admitted that defendants on the second day of April, 1910, took actual possession of, and posted and filed notices of location under the placer mining laws of the United States, of the tract of land on which they are now in possession, and concerning which this suit is brought, which tract of land is described by metes and bounds in defendant's answer.

"It is further admitted that when defendants took possession of said land, they located the western boundary line of their location, as the Bristol meander line, *as properly located*, and the defendant does not claim the ownership or possession of

any land west of the true location of said Bristol meander line.

"It is admitted that since the institution of this suit that the defendants have actually discovered oil and gas and are now producing oil from said property.

"It is admitted by both parties, that the land in controversy *is high land* and *was high land, at the date that Bristol made his survey in 1871.*

"There being a dispute between the Plaintiff and Defendants as to the true location of the Bristol meander line referred to above, it is agreed that the said issue as to the true and *exact location of said line* is not to be passed upon in this case, said issue being relegated to a subsequent proceeding herein, should the Court sustain the defendant's position that *said line is the true boundary between the property*, and the question of costs and damages are likewise relegated to further proceedings."

CONTROLLING FACTS.

It is incontrovertible:

(a) That neither Pitts nor any of the other owners, Walsch or Noel, ever made *claim* to the land here in dispute, and yet unless each in turn owned it, the plaintiff does not;

(b) That neither Pitts nor any of the other owners ever were in possession of the land in dispute or of any portion of it;

(c) That all of the land now in dispute was, when the Bristol survey was run, high land, and has ever since been high land.

The words of the admission are:

"It is admitted by both parties, that the land in controversy is high land and was high land, at the date that Bristol made his survey in 1871." (Rec., p. 39);

(d) That neither Pitts nor any one else has ever paid to the United States Government one cent for these extra forty to eighty-seven acres of land which the plaintiff now claims; and if the plaintiff could succeed in this case, it would obtain all the land here in dispute—forty to eighty-seven acres—without paying one cent for the same to the United States;

(e) That the facts in the case preceding and surrounding the Bristol survey of 1871,—the notes of that survey, the application for the survey, the plat of the survey,—demonstrate that the boundary line of lot No. One (1) was *not* the waters of Jeems Bayou but the actual traverse lines run by Bristol.

CONCLUSION.

That all these facts and the plat and patent issued to Pitts in 1892 demonstrate that the United States never did sell or convey to Pitts, under whom the plaintiff claims, any portion of the land in dispute:

That the land in dispute, on April 2, 1910, was the property of the United States, and that the defend-

ants lawfully made a location on the same, and, having discovered oil and gas, are entitled to a patent therefor.

MAPS.

In the Record (p. 136) is a map combining the survey lines of the following different plats showing, *inter alia,* the land in dispute, the different surveys of the same, and a plat of the land not included in the Bristol survey:

(a) The survey lines of a small plat we call the Bristol plat (Exhibit F-2), made in the Surveyor General's Office and shown by the red lines. This was made from the notes of Bristol but enlarged so as to be more easily read;

(b) Another plat (Exhibit H) made by Williams from his notes of survey in 1910, made for the plaintiff and shown by the brown lines;

(c) Another plat (Exhibit 2) made by Barnes from the notes of his survey in 1910, made for the defendants and shown by the green lines;

(d) Another plat (Exhibit 18) made by Barbour shown by yellow lines, the area of land which Bristol did not survey on the south.

Pitts' improvements are located on the Bristol map from the courses and distances given in Bristol's field notes (Record, p. 28, *et seq.*)

Argument.

(I) THE PLAINTIFF HAS NOT ANY HIGHER OR BETTER TITLE TO THE LAND IN DISPUTE THAN THOMAS PITTS, ITS PREDECESSOR IN TITLE, HAD. THE TITLE OF PITTS DEPENDS UPON WHETHER THE PATENT OF THE UNITED STATES, WHICH IT GAVE TO PITTS IN 1892, DID CONVEY TO PITTS THIS LAND NOW IN DISPUTE—FORTY TO EIGHTY-SEVEN ACRES—AS PART OF LOT NO. ONE (1).

THE RULE FOR THE CONSTRUCTION OF A PATENT IS THAT IT IS TO BE CONSTRUED STRICTLY AGAINST THE GRANTEE—THAT SUCH PUBLIC GRANTS CONVEY NOTHING BY IMPLICATION, BUT ARE CONSTRUED STRICTLY IN FAVOR OF THE GOVERNMENT —AND UNLESS THE NECESSARY AND UNAVOIDABLE CONSTRUCTION OF THE PATENT SHOWS A PLAIN INTENT TO CONVEY SAID LAND TO PITTS, IT WILL NOT BE SO CONSTRUED.

In *Shively vs. Bowlby*, 152 U. S., 1, 10, this Court, in construing a patent issued by the Federal Government, said:

> "It was argued for the defendants in error that the question presented was a mere question of construction of a grant bounded by tide water, and would have been the same as it is if the grantor had been a private person. But this is not so. The rule of construction in the case of such a grant from the sovereign is quite different from that which governs private grants. The familiar rule and its

chief foundation were felicitously expressed by Sir William Scott: *'All grants of the Crown are to be strictly construed against the grantee, contrary to the usual policy of the law in the consideration of grants;* and upon this just ground, that the prerogatives and rights and emoluments of the Crown being conferred upon it for great purposes, and for the public use, it shall not be intended that such prerogatives, rights and emoluments are diminished by any grant, beyond what such grant by *necessary* and *unavoidable construction* shall take away.' The Rebeckah, 1 C. Rob., 227, 230. Many judgments of this court are to the same effect."

Remembering this rule, that the plaintiff cannot recover unless the *necessary* and *unavoidable* construction of the patent so shows,

We ask, did the United States in conveying Lot 1, containing 12.84 acres, mean also to convey from forty-five to eighty-seven acres more, for which extra land it received no consideration?

To answer this question—

You take all the words in the patent.

You see the patent speaks of a location on Lot 1.

You read those words in the light of

(a) The surroundings when the survey was made which located the land in lot one (1);

and

(b) The words of the patent.

From all the facts and circumstances which throw light upon it you find out the true construction of the patent.

In *United States vs. Arredondo,* 6 Pet., 738, the court said:

"Public grants convey nothing by implication; they are construed strictly in favor of the king. * * * The general words of a king's grant shall never be so construed as to deprive him of a greater amount of revenue than he intended to grant, or to be deemed to be to his or the prejudice of the commonwealth. (739) * * * The words of a grant are always construed according to the intention of the parties, as manifested in the grant by its terms or by the reasonable and necessary implication, to be deduced from the situation of the parties and of the thing granted, its nature and use. (740) * * * We *must be governed by the clearly expressed and manifest intention of the grantor,* and not the grantee in private *a fortiori* in public grants." (741).

(II) THE WORDS OF THE PATENT TO PITTS DO NOT SHOW ANY SUCH PLAIN INTENT TO CONVEY THE LAND IN DISPUTE, BUT ON THE CONTRARY BY ITS VERY WORDS, AND ESPECIALLY THOSE WORDS READ IN THE LIGHT OF ALL THE CIRCUMSTANCES PRECEDING AND SURROUNDING IT, THE INTENT IS PLAIN, THAT IN CONVEYING LOT NO. ONE (1) OF SECTION FOUR (4) THE UNITED STATES INTENDED TO CONVEY, AND PITTS EXPECTED TO RECEIVE, ONLY THE 12-84/100 ACRES WITHIN THE TRAVERSE LINES OF THE BRISTOL SURVEY AND PLAT—AND NOTHING ELSE WHATEVER.

Unless the patent to Pitts conveyed to him the land in dispute, the plaintiff's action must fail.

If the United States intended in its patent to Pitts to convey the land in dispute to him, treating Bristol's survey as a meander line and the water of Jeems Bayou as the boundary, it certainly, either in the plat it made of Bristol's survey or in the patent, would in some way have so indicated. Yet all the indications are to the contrary. The Bristol map does not mark it as a meander line. The patent does not convey *according to* the surveyor's notes but in these words:

> "According to the *official plat* of the survey of said lands."

Now this plat certainly did not treat the lines surrounding Pitts' improvements as meander lines, indicating Jeems Bayou waters, but treated them merely as boundary lines.

Whatever may have been Bristol's intent in stating in his notes the meander of Jeems Bayou, it is certain the Land Office of the Government did not so treat these lines, but, on the contrary, dealt with Pitts on the basis that these lines were real boundary lines, sold and conveyed to him on that basis.

Let us see what we can find out about the land in dispute at the time of the survey by Bristol in 1871.

Its history, so far as the evidence shows, is this:

In 1858 Alfred Wilson sold to Ann Pitts *160* acres of land (Rec., 24).

The description is the one subsequently sent by Pitts to have the land surveyed:

"'*All the improvement* lying on and about the following described land, to wit: The S. E. ¼ of the S. W. ¼ and the S. W. ¼ of S. E. ¼ of Sect. No. 4, and East ½ of N. W. ¼ and West ½ of N. E. ¼ of Sect. (9) Nine, Township 20, Range 16, West of Northwestern land District of Louisiana, containing 160 acres more or less the fractional losses being considered.'

"Survey made by Haily Watts, then Parish Surveyor. (Please estimate.)" (Rec., 24.)

We do not have that survey.

This does not mention the waters of Jeems Bayou.

It was the *improvement* that was the principal thing sold.

We know the land had—

improvements on it in 1858,

for so the deed from Wilson to Pitts said (*supra,* p. 7).

The area of the land was 160 acres, more or less; Pitts had occupied it from 1858, for in his letter of November 14, 1870, he speaks of there being a settlement *there for 15 years;* and that Pitts had occupied it for many years (Rec., 23).

Pitts had a house on it which was his home, for Buckner says in his letter of April 14, 1871 (Rec., 24), that Crocker is trying to put *Pitts out of house and home.*

In Bristol's notes (Rec., 30) he says:

S. 11 degrees W. 3.00,
Pitts' *dwelling* 1.50 East.

Pitts cultivated the land, for Buckner says in that letter (Rec., 25) that Pitts had a

fine *growing* crop.

Pitts *was in possession* of it; for Pitts so said in his letter of November 14, 1870 (Rec., 23).

Buckner said in his letter of April 13, 1871 (Rec., 24), that Mrs. Pitts had bought it—

"with the improvements thirteen years ago, and has had undisputed possession ever since."

So it was land with improvements on it.
Had a house Pitts lived in;
Land with fine crops.

The notes of Bristol's survey and the plat made from his survey also show:

That Pitts had a farm trail on it near corner of sections 4 and 9 (Rec., 29);

He had a special field—called Pitts' field (see Bristol map);

He had a corn field,—N. 39½ degrees W. 3.00 chains (Rec., 30), being in lot No. One (1), Section four (4);

Pitts had an enclosure, for Bristol's notes say at—

"N. 81 degrees W. 2.80, at 1.10 *enter Pitts' enclosure*" (Rec., 30);

The land had roads (Bristol's map).

THE BRISTOL SURVEY WAS MADE AT PITTS' REQUEST, and it was made so that Pitts could obtain a patent for the land he occupied and cultivated.

In Pitts' letter to the United States Surveyor General, dated November 14, 1870, Pitts tells him (Rec., 23) that—

"frequently applications have been made to enter the same at U. S. and State Land Office; and upon examining maps, find it as Lake, which debars us from entering.

"I had written His Hon. Mr. Wilson to order an U. S. Surveyor to come and make a survey of this land, so that I may enter it and have a clear title; and he refers me to you.

"I hope, sir, that you will send a surveyor to run off this land as soon as convenient, as I have

occupied it for many years; having purchased from original settler his improvement claim and still hold it."

It will be noticed that here is Pitts' statement that frequent applications had been made to enter the land but they were refused, and that he wants Mr. Wilson—

"to order an U. S. Surveyor to come and make a survey of this land, so that I may enter it and have a clear title."

As to the land that he wants thus surveyed, Pitts says,—

"I have occupied it for many years; having purchased from original settler his improvement claim and still hold it."

This letter of Pitts to the U. S. Surveyor General is followed by a letter dated April 13, 1871 (Rec., 24), from Robert T. Buckner to John Lynch, Esq., Surveyor General at New Orleans, in which he tells Mr. Lynch that—

"Your favor of the 23d November, 1870, to S. D. Pitts has been handed to me with directions from him to take such steps as may be necessary *to perfect his title* to the place known as 'Wilson Point' in Caddo Parish. * * *

"I send herewith a description of the land from which you can make your estimate of the amount to be deposited.

"You will greatly oblige me by an early reply as one Peter Crocker is endeavoring to enter this

land, notwithstanding the fact as you will see, that Mrs. Pitts bought it with the improvements thirteen years ago, and has had undisputed possession ever since."

The enclosed description is the one in the deed from Wilson to Pitts (*supra*, p. 7).

Again, in a letter dated April 14, 1871, from Ro. T. Buckner to his brother, R. T. Buckner, Mr. Buckner says (Rec., 24):

> "Peter Crocker is making every effort to enter the Wilson place and turn Eliza and Mr. Pitts of a house and home. The land has never been surveyed by a Government Surveyor, and I have written to Mr. Lynch for an order appointing Capt. Leavenworth, a Deputy Surveyor, to survey the place. * * * Mr. Pitts has a fine crop growing on the place and has a prospect of doing well if he is only quited in his possession."

What Pitts wanted surveyed was the land he occupied: where he had his house: his enclosure: his crops and fields and trail and corn field.

After more correspondence, in which the place to be surveyed was called Wilson's Point and an island, Bristol was appointed to make the survey, and in his field notes he says he is,

> to *subdivide* the tract
> "called Wilson's Point." (Rec., 28).

Wilson was the name of the original settler.

One of the accompanying facts is that Leavenworth, Official Surveyor of the Parish (Rec., 25), writes the Surveyor General that the work to be done would probably require,

3 miles of ordinary section line,
3 miles of traverse line.

It may be noted in passing that R. L. Buckner—evidently the attorney, either in fact or at law, of Mr. Pitts—accompanies the surveyor as a

Flagman. (Rec., 28).

Here, then, so far as both the Government and Pitts are concerned, was a survey to cover Pitts' claim.

What, if any, work outside of that the surveyor was to do, is disputed.

But there can be no controversy he was to survey the land occupied and claimed by Pitts.

And we have that land fairly well indicated by—

Farm trail	
The house	In area it was
The corn field	160 acres.
The Pitts' field	It was located in
The Pitts' road	Secs. 4 and 9.
The Pitts' enclosure	

Bristol made the survey in two days in 1871, and on July 29, 1871, reported he had surveyed

"the sub-division of Wilson's Point"

and he returns his notes of survey (Rec., 31).

These notes were platted at the Land Office on a map we have called *Bristol's Map*. It is exceedingly small and quite difficult to read. In enlarged shape it is found in the Record, page 136.

Let us see what that map shows:

Contents.

I have shown you Pitts' claim was for 160 acres.

In section 9 of Bristol's survey you will find a lot of 40 acres that is not numbered, and in 1878 Pitts received a separate patent for just that 40 acres. (Rec., 20.)

That patent read that—

"* * * full payment has been made by the said Thomas H. Pitts * * * for the northwest quarter of the north east quarter of Section nine * * * containing Forty Acres according to the official plat of the survey of the said lands, returned to the General Land Office by the Surveyor General, which said tract has been purchased by the said Thomas H. Pitts."

That left Pitts' claim as *120 acres.*

That 40 acres is not identified on the plat as a lot or number—simply 40 acres.

Why?

Because Pitts evidently had then secured an old soldier's warrant for 120 acres, with which he intended to pay, and did pay, for the other 120 acres, and this statement is made from the recital in the second patent Pitts received in 1892 (Rec., 21).

That patent of 1892 recites:

"Whereas, in pursuance of the Act of Congress, approved March 3, 1855, entitled 'An Act in Addition to Certain Acts granting Bounty Land to certain Officers and Soldiers who have been engaged in the military service of the United States,' there has been deposited in the General Land Office, Warrant No. 34,916 for 120 acres, in favor of William Gayle, Private, Captain Pitts Company, Virginia Militia, War 1812, with evidence that the same has been duly located upon the Lots numbered one, two, three and four of Section Nine and the Lots numbered one and two of Section Four in Township Twenty North, of Range Sixteen West, of Louisiana, Meridian, in the District of Lands subject to sale at Natchitoches, Louisiana, containing One Hundred and Twenty-three acres and eighty-eight hundredths of an acre, *according to the Official Plat of the Survey of said Lands returned to the General Land Office by the Surveyor-General.* The said Warrant having been duly assigned to Thomas H. Pitts, in whose favor said tract has been located."

"According to," *i. e.*, that is defined and particularly described in the plat. The total acreage the patent says is 123.88 acres, and this acreage is defined by and proven by and determined by the plat, *i. e.*, according to it.

Read, then, the patent looking at and embracing the map, and is it not demonstrated that all the Government (for the words are its words) intended to convey was the 123.88 acres, and to make this up Lot No. 1 contained as marked on the plat only 12.84, and not 12.84 plus 40 to 87 acres more?

It is true that this recital does not state the date when the Gayle warrant was assigned to Thomas H. Pitts, but it does state that the warrant,

> "has been duly located upon the Lots numbered one, two, three and four of Section Nine and the Lots numbered one and two of Section Four,"

and it does give the exact contents of those lots as

> "One Hundred Twenty-three acres and eighty-eight hundredths of an acre,"

and it says that this quantity is,—

> "according to the Official Plat of the Survey of said Lands."

It further recites that the warrant was assigned to Thomas H. Pitts,—

> "in whose favor said tract has been located."

The old soldier's warrant which Pitts secured was to be located upon land. Thus the Act of March 22, 1852, (10 St. at L., p. 3) states in reference to said warrants,—

> "That the warrants which have been, or may hereafter be issued in pursuance of said laws or of this act may be *located* according to the legal subdivisions of the public lands in one body upon any lands of the United States, subject to private entry at the time of such location, at the minimum price. Provided, further, That when said warrant shall be *located* on lands which are subject to entry at a greater minimum than one dollar and twenty-five cents per acre, the *locator* of said warrants shall pay to the United States in cash the difference between the value of such warrants at one dollar and twenty-five cents per acre and the tract of land located on."

And the Act of March 3, 1855 (10 St. at L., 702), which is the very act under which the patent recites that the Gayle warrant was issued, says (Sec. 5):

> "no warrant issued under the provisions of this act shall be *located on any public lands*, except such as shall at the time be subject to sale at either the minimum or lower graduated prices."

A warrant authorizes the warrantee to locate upon land up to the extent of the acres named in the warrant, and as this patent recites that this warrant had been located upon these lots and that the location was made

for Pitts himself, it must have been assigned to Pitts prior to the location, although there is no direct proof to that effect.

The indications would seem to be that Pitts, who evidently was the captain of the company in which Gayle was private, had been the owner of the warrant of Gayle for the one hundred and twenty acres prior to the Bristol survey.

But whenever the warrant was assigned to Pitts is perhaps not so important because:

> The survey was made for Pitts to cover Pitts' claim, and Pitts' claim was stated in the Wilson deed to be one hundred and sixty acres, more or less, and Pitts' claim, as we show from the map itself, included the Pitts' improvements and house, etc., and the Bristol line was run to include all those improvements. This, with the recollection that the total claim that Pitts made was one hundred and sixty acres, and that the Bristol survey was run and the map from it was made, so far as Pitts was concerned, to cover that one hundred and sixty acres; that Bristol's irregular line included Pitts' improvements and the 160 acres, and Buckner, Pitts' attorney, in his letter of April 14, 1871, (Rec., 24) says he wants the survey to protect Pitts in possession of his (Pitts') house, seems to be a demonstration that the actual traverse lines run for Pitts are the real boundary lines of the land the U. S. Patent conveyed to Pitts and that Lot No. One (1), Section four (4), actually contained twelve and 84/100 acres and no more.

TURN NOW TO

Land Office Plat of Bristol Survey (136).

The plat numbers the lots and gives with precision the details of each lot:

Sec. 4—	
Lot 1	12.84
Lot 2	11.44
Sec. 9—	
Lot 1	14.76
Lot 2	26.20
Lot 3	39.96
Lot 4	18.68
	123.88

When Pitts' patent
was made, what
did it convey to him?
123 acres
88/100 of an acre (Rec., 21).

Just the contents of the six lots.

Pitts paid for his excess over 120 acres—3.88/100 —$1.25 per acre.

He could not have received his patent unless he did so. (U. S. Rev. St., Sec. 2415.)

He had already paid for his 40 acres.

The patent for them so says.
(Rec., p. 20.)

He pays by the soldier's (Gayle's) warrant for the 123.88 acres so far as the warrant will go, and cash for the extra 3.88 acres of land.

Notice the property this patent of 1892 conveyed:
It covers and includes all Pitts' improvements —house, corn field, etc., etc.

That was why the property was surveyed.
What Pitts bought:
What the Government sold to Pitts.

NOTICE HOW THE BRISTOL SURVEY, LOCATING THE SECTIONAL LINE BETWEEN SECTIONS FOUR AND NINE (4 and 9) WHICH BRISTOL RAN ON THE FIRST DAY, LOCATES PITTS' IMPROVEMENTS.

Bristol starts the first day (Rec., 28) with a corner of sections 3, 4, 9 and 10, and then he runs along this sectional line between sections 4 and 9, until he comes to a gum tree seven (7) inches in diameter, marked for a meander corner between sections 4 and 9; and the distance of that gum from the corner of sections 3, 4, 9 and 10 is 24.50 chains.

Still prolonging his sectional line, but counting always, on the first day, from the corner of sections 3, 4, 9 and 10, he notes that (Rec., 29):

"25.00 farm trail.
36.53 Pitts' fence.
39.50 Pitts' corn field.
40.00 set a post for Quarter sec. corner a charred stake and mound in corn field."

Here you see the lines are run to include the Pitts' improvements.

SECOND DAY.

On the second day, on which he started to and did survey fractional sections 4 and 9, he began at the gum tree 24.50 chains west of the corner of sections 3, 4, 9 and 10. Now he had heretofore given Pitts' farm trail as 25.00 chains west of the corner of sections 3, 4, 9 and 10, and his first survey line running north was run at *just* ½ *chain,* or 33 feet, to the east of the farm trail of Pitts, thereby including it.

Following, now, this irregular line (which is the survey of lot one in section 4), you find by Bristol's notes that when he comes to the course—"N. 81 degrees W. 2.80," he says, "at 1.10, enter Pitts' enclosure." This enclosure is marked on the Bristol map.

Then he gives another course and distance,—"N. 39½ degrees W. 3.00, enter corn field,"—which corn field is also marked on this Bristol map.

Then, after a number of other courses, he runs S. 50 degrees East 3.50 chains to the corner of fractional sections 4 and 9; and then he comes into section 9.

Following, now, the different courses, he again runs S. 11 degrees W. 3.00 chains, Pitts' dwelling 1.50 East. Then again he runs S. 24¾ degrees E. 9.00 chains, at 4.00 chains cross Pitts' fence.

After several other distances he calls for a road at "N. 30 degrees E. 9.30, at 5.29 Road," and at "N. 78

degrees W. 30.00 at 17.84 road;" and ther subsequently he gives the course,—N. 20 degrees E. 10.00 chains to original meander corner to sections 2, 3, 10 and 11.

On Bristol's map you will find in section 9 a field marked "Pitts' field," and you will also find that in section 9 the lots are numbered as follows:

Lot 1—14.76 acres;
2—26.20 "
3—39.96 "
4—18.68 "

You also find (as before noted) a forty-acre tract for which the separate patent was issued, which is not numbered at all.

Thus you have the following results:

(a) The survey itself, as platted, shows that it includes, and runs around so as to include, Pitts' improvements. The line is exceedingly irregular, but if it is remembered that the surveyor had two things in mind,—

(1)—to cover Pitts' improvements
—and—
(2)—to survey for Pitts only 160 acres,

the irregularity of the line is easily explained.

(b) You have the fact that Pitts had made the application for the survey, and the survey was made (at least chiefly) to cover Pitts' claim, which was the 160 acres.

(c) The land to be surveyed was identified by the description in Wilson's deed as being part of sections 4 and 9, containing 160 acres, more or less, and was further identified by being in the possession of Pitts, having a house on it, having a farm trail, having a corn field, having an enclosure, having fences; and all these this irregular line included in the survey.

(d) If, as we think, Pitts then had the soldier Gayle's warrant of 120 acres, the reason why the 40-acre tract was surveyed separate and distinct from the other six lots is apparent. The 120-acre warrant could only pay for 120 acres, and Pitts' area was 160 acres. Therefore, he had a separate patent and a separate survey for the extra 40 acres, and this is shown on the Bristol plat as unnumbered but as containing 40 acres (Rec., p. 20).

(e) You have no explanation of the division of this survey into six lots, whose total was 123 88/100 acres, unless the explanation is (as we think it is) that it was so calculated and platted and surveyed as to amount to 120 acres and only overrun it by 3 88/100 acres. Why would the Government in platting the survey make all the subdivision of lots and calculate closely the area, without some purpose? What possible purpose could there have been except that these sectional lots were to be paid for by the old soldier's warrant of 120 acres, and the additional 40 acres, to make up the 160, were to be paid for separately by Pitts under a separate patent; and that, in fact, was what was done.

Does this not demonstrate as nearly as one can when considering such a thing, that the Bristol survey and the Bristol map were made for the purpose of covering the improvements of Pitts and to enable Pitts to

purchase from the Government 160 acres of land, and that this fully explains the irregularity of the lines of the survey and why they were run as they were?

It also explains Bristol's note (Rec., 30),—

"S. 86½ degrees W. 2.50 spur of marsh extend out north."

He did not pretend to survey this northern land, although (as the admitted facts in this case show) this northern land was then high land and was upland and was capable of occupation and survey; but instead of surveying it he runs away from it. He does say there is a spur of marsh, but how much marsh there was is not stated. Even marsh is land and is not water. If he had run his line up to the north and around Jeems Bayou that partly surrounds this tongue of land now in dispute, he would have added to the 160 acres that Pitts wanted some 40 to 70 acres more, which Pitts did not want and of which Pitts did not have possession and which Pitts had not cultivated. Bristol ran away from this northern land, and his courses thereafter are south.

Notice that the plat does not include this spur of marsh extending north but ignores it, as an indication that, taken in connection with his courses, Bristol was running away from this land in dispute.

Possession.

Wilson down to 1858; Pitts from 1858 down to November, 1880, when he sold to Charles F. Walsch; Walsch down to 1884 when he sold to James S. Noel, the vendor of the Producers Oil Company; and James

S. Noel down to April 15, 1910, all took possession of the Pitts' land in succession as vendees, and the possession of each and all of them was *inside* of the Bristol irregular lines and comprised as a total the one hundred and sixty-three acres. Neither Pitts nor Walsch nor Noel ever claimed to own any portion of the land in dispute which is outside of the Bristol survey.

As heretofore shown, the parties in this case admitted that,—

> "It is admitted by both parties that J. S. Noel was in possession, as owner, from the date of his purchase in 1880, to the sale to the plaintiffs of the property known as the Wilson's Point place, his corporeal possession being limited on the East and North by the Bristol meander line, and said Noel NEVER EXERCISED ANY ACTS OF CORPORAL POSSESSION, OR WAS EVER IN OCCUPANCY OF ANY LAND IN SECTION FOUR, EAST OF OR OUTSIDE OF THE SAID MEANDER LINE, OR OF ANY OF THE LAND IN CONTROVERSY" (Rec., 39).

It was not until after the purchase of the Producers Oil Company that some bright intellect conceived the idea that the Bristol lines might be treated as meander lines indicating the waters of Jeems Bayou so as to surround the land in dispute. Pitts never claimed that, Walsch never claimed that, Noel never claimed that. It remained for the Producers Oil Company, after there were strong indications of oil on this land, to make that claim for the first time, and it was done in 1910—thirty-nine years after the Bristol survey in 1871.

Is it not remarkable that if such a claim was good, neither Pitts, who was on the land in 1871 and remained

there until 1880, nor Walsch, who bought from him, nor Noel, who bought from Walsch in 1884 and remained until 1910, ever suggested such a thing or indicated such a thing or claimed such a thing?

The deed from Wilson to Pitts was for one hundred and sixty acres, more or less; from Pitts to Walsch one hundred sixty-three and eighty-eight hundredths (163.88) acres, including this three and eighty-eight hundredths (3.88) acres, as before described; the deed from Walsch to Noel again described the entire tract as one hundred sixty-three and eighty-eight hundredths acres (Rec., 17) and it was not until the conveyance was made to the Producers Oil Company in 1910, on April 15th, that the words "more or less" were added to the conveyances which were made after the Bristol Survey of 1871.

Conclusion.

Remembering that the Producers Oil Company must and does claim under the Pitts' patent for 123.88 acres, that unless that patent to Pitts conveyed in addition the land in dispute, containing from 40 to 70 acres more, the Producers Oil Company, the plaintiff in this case, cannot recover:

Remembering the rules heretofore laid down for the construction of such a patent, i. e.,

Shively vs. Bowlby, 152 U. S., 1, 10:

"All grants of the Crown are to be strictly construed against the grantee, contrary to the usual policy of the law in the consideration of grants;"

and

United States vs. Arredondo, 6 Peters, 738:

"Public grants convey nothing by implication; they are construed strictly in favor of the King. * * * We must be governed by the clearly expressed and manifest intention of the grantor * * * (741);"

we confidently insist that the plaintiff has not shown and cannot show by the survey and plat and patent that the intention of the United States was to convey by the patent any part of the land in dispute,

but on the contrary,

it is plain from the Bristol survey, plat and the patent that the Government only intended to convey, and only did convey, strict measure, 163.88 acres of land, not including any part of the land in dispute.

Attention is especially called to the express provision of the United States statute, that all excess of land over and above the quantity named in the soldier's warrant should be paid for by the patentee to the United States.

Is it possible that the United States, with this express provision of the statute, intended to give Pitts for nothing this extra forty to eighty-seven acres of land? And yet this is the plaintiff's contention.

Meander Line.

But the plaintiff replies there was a meander line run by Bristol in 1871, meandering the banks of Jeems Bayou, and this meander line includes the land in dispute.

But if so, the United States would have known it and would have intended to convey the land in dispute to Pitts.

And as we have seen, the facts in the case contradict this.

The United States Land Office in plotting the Bristol Survey did not mark or in any way treat this so-called meander line of Bristol as such.

There is nothing magical in the word *meander*—all kinds of crooked lines are indifferently called meander lines.

And so this Court has said:

> "But there is no such magic in a meandered line. All that can be said of it is that it is an irregular line which bounds a body of land, and beyond that boundary there may be found forest or prairie, land or water, Government or Indian reservation."
>
> *Niles vs. Cedar Point Club*, 175 U. S., 308.

In *Railroad Company vs. Schurmeir*, 7 Wall., 272, 286, this Court thus defines a meander line:

> "Meander-lines are run in surveying fractional portions of the public lands bordering upon nav-

igable rivers, *not as boundaries of the tract,* but for the *purpose of defining the sinuosities of the banks of the stream,* and as the means of *ascertaining* the *quantity of the land* in the fraction subject to sale, and which is to be paid for by the purchaser.

"In *preparing the official plat* from the field-notes, the meander-line is represented as the *border-line of the stream,* and *shows, to a demonstration, that the water-course, and not the meander-line, as actually run on the land, is the boundary.*"

The language of this definition shows by the briefest analysis that the meander-line is—

(a) "for the purpose of defining the sinuosities of the banks of the stream;"

(b) "as the means of ascertaining the quantity of the lands in the fraction subject to sale, and which is to be paid for by the purchaser;"

and

(c) being outlined and laid down on the plat, "is represented as the border-line of the stream, and shows, *to a demonstration,* that the water-course, and not the meander-line, as actually run on the land, is the boundary."

Tested by this definition, which is sustained by all authorities, the so-called meander line of Bristol fails in all respects.

Take the Williams map—which is the plaintiff's map—or the Barnes map—and the map in the Record and made a part of the opinion of the Court below, and look at the Bristol meander line.

We see as follows:

(1) The lines were run by Bristol to designate the Pitts' claim of 160 acres and to include within those lines all the improvements of Pitts as hereinbefore shown, and this explains Bristol's crooked lines and demonstrates that those lines were not run for the purpose of

"defining the sinuosities"
of Jeems Bayou.

And therefore the Bristol line is not a meander line.

(2) It is evidently not run for the purpose of defining the sinuosities of the banks of Jeems Bayou. No one would doubt this who looks at the meander line itself and the sinuosities of the bayou on any map in the case. Neither in courses nor distances nor fluctuation is there any resemblance between the meander line and the lines of the bayou.

Take any portion of this so-called meander line, and notice how entirely different it is from the courses and distances shown as the bayou water line on the Williams map, the one made by the engineer of the plaintiff. No portion of the line resembles or indicates the bends and turns, *i. e.*, the sinuosities of the banks of Jeems Bayou. Take any course or distance of the meander lines and attempt, by enlarging them,—all the meander lines—to embrace the so-called tongue of land in dispute, and it will be seen how utterly impossible it is by so projecting these lines to do so. Take, for example, the line—South 57 degrees W. 2.50 chains—and project it, and see where it will go. Take the line—South 86½ degrees W. 2.50 chains—and project it. Take the line—North 47½ degrees E. 2.50 chains—and see where it will go. The projection of none of these lines or all of them would at all correspond

to the sinuosities and the curves of the Jeems Bayou as it surrounds on the east, west and north this tongue of land.

If, then, you are to test and determine whether a crooked or bending survey or line is intended to be a meandering line, and you apply the doctrine of this Court that it is a line that follows—

"the sinuosities of the banks of the stream,"

you see how utterly this line fails to comply with that test.

(3) Another purpose of the meander line, so this Court said in the case cited, is to ascertain the quantity of the land in the fraction subject to sale and which is to be paid for by the purchaser. Now, Bristol found that the quantity of land which the government was to sell under this survey of Lot 1 to Pitts was 12.84 acres.

But the plaintiff now claims that this meander line, around lot one, which Bristol said contained only 12.84 acres, in reality embraces eighty-seven acres additional. Thus, instead of the survey of Bristol marking out 12.84 acres in lot one for Pitts, it in reality marked out 12.84 acres plus 87.00 acres, making a total of over 99.00 acres, or over eight times the quantity of land embraced in lot number one as determined by Bristol himself.

But the plaintiff claims that this claim made by the defendants as to it is excessive and that the judgment of the court below only embraced all of the land inside of the lines of the Jeems Bayou as shown on Exhibit "H," and that this total additional acreage it claims is only between 40 and 45 acres. If we then add the 45.00 acres to the 12.84 acres which the Bristol survey said was in lot number one, we have the Bristol

survey giving to Pitts 52.84 to 57.84 acres, instead of the 12.84 acres which Bristol returned to the United States as the quantity that Pitts was to get, and which was embraced within the survey, or very nearly five times the land which Bristol returned to the government as contained in lot No. One,—four or five times the amount which under the Bristol plat of lot No. 1 should go to Pitts.

Well, if the intention of the meander line is to ascertain the quantity of land to be sold, then Bristol must have known that the land bounded by the Jeems Bayou contained three or four times more land than the acreage enclosed within the lines of survey. If so, how did the official plat the United States Government made from the Bristol survey show the acreage to be conveyed as only 12.84 acres, when it was over 57? How was it the word *lot* was marked inside the survey line? How was it the quantity in lots 1 and 2 was given as 24.28 acres when it was over 57 acres?

In *Niles vs. Cedar Point Club,* 175 U. S., 306, the court said that the patentee as a rule—

"will not ordinarily be heard to insist that * * * more land was bought than was paid for."

Now, admittedly, Pitts did not pay one cent for the land in dispute,—this extra forty acres.

(4) Then, too, this Court said in *Railroad Co. vs. Schurmeir, supra,* that when the field notes were platted this meander line would show—

"to a demonstration, that the water-course, and not the meander-line, as actually run on the land, is the boundary." (287)

Is that a fact in this case? Looking at the Bristol map or the Williams' plat (plaintiff's exhibit), is it a demonstration that the line from the starting point, at the gum tree in section 4, was intended to be extended 4 or 5 times and to surround 3 or 4 times the acreage marked on the plat as Lot No. 1?

(5) But if Bristol really meant to meander the banks of Jeems Bayou by a regular meander line, why did he not do it? Why did he run his lines where he did? Why did he not run them where Williams has run his meander line,—along the banks?

Remember, the admission states (Rec., 39):

> "* * * that the land in controversy is high land and *was* high land, at the date that Bristol made his survey in 1871."

In *II. Farnham on Waters and Water Rights,* Sec. 418, he says:

> "Therefore, where the line is not in fact run on the banks of the water and was apparently not intended to be run on the bank, the line, and not the water, will be the boundary."

Bristol's survey in section four (4) measures only 32.80 chains,—2,164.80 feet.

The actual meander line around Jeems Bayou as run by Williams measures 101.54 chains,—6,701.64 feet. (See the combination of maps in the record.)

Why should Bristol stop running north when he got to N. 16 degrees W. 2.50 chains, if he meant to run

his line along the banks of Jeems Bayou? Why stop at almost one-third of a mile from the bayou bank north?

(6) The warrant to Gayle only called for 120 acres in sections four (4) and nine (9).

Pitts' house and roads and fences were in sections 4 and 9, as the plat and the evidence show. At the extreme western end of lot one (1) Bristol calls for—

"enter Pitts' enclosure."

The next direction is—

"N. 39½ degrees W., 3.00; enter corn field," and this corn field is part of lots one (1) and two (2), and the line then runs to cover the corn field.

This Gayle warrant which Pitts owned had to be located in one body,—120 acres. But the warrant must include Pitts' house, corn field and enclosure, farm trail, fences and roads; and if you look at the lots in section nine (9), on part of which lots there were fences and roads, you get this result:

Lot 1—14.76 acres;
" 2—26.20 "
" 3—39.36 "
" 4—18.68 "

99.00 acres.

This leaves only twenty-one (21) acres short of the 120.

Bristol, then, could not run his lines to include this 45 extra acres, because it would contain too much land; and thus he never intended to include all the land

outside his crooked lines and up to the banks of Jeems Bayou, as it would have covered 45 acres more.

He therefore only surveyed in section four (4) 24.28 acres. The total land possessed or claimed by Pitts and his predecessors was 160 acres (Rec., 24). This 24.28 acres added to the 99 acres makes the tota of 123 28/100 acres.

There was a distinct lot of 40 acres in section nine which did not come under the soldier Gayle's warrant, and for this 40 acres Pitts got a separate patent in 1878, for which he paid in full (Rec., 20). This made th 160 acres plus 3-28/100 acres of a surplus.

(7) There is a course in Bristol's survey:

"S. 86½ degrees W. 2.50, spur of marsh extend out north." (Rec., 30.)

Certainly no one could imagine that was a meander line. It does not call for Jeems Bayou or for water.

"SPUR OF MARSH EXTEND OUT NORTH."

It is the duty and practice of a surveyor to run a closed line around the track he is surveying. He starts at a fixed point and runs a line around until he returns to this same point. What he has inclosed within his line is the tract surveyed. The purpose of the survey is to *include* within an enclosure the tract in question and exclude everything else,—to carve out and separate from the surrounding land the particular tract.

Bristol in our case surveyed a line entirely around the Pitts' improvements and containing a total of

123 28/100 acres. Beginning, he runs north and northwest, then turns almost due west,—"S. 86½ degrees W. 2.50 chains",—and as he runs this last distance west, he says:

"Spur of marsh extend out north."

Bristol knew, and the map of his survey shows, that the tract he was surveying around was *south* of his last course (S. 86½ degrees W. 2.50 chains). He says *north,* i. e., north of this course and distance, lies a spur of marsh. If north of the last course, the marsh necessarily lies north of and wholly outside of the tract he is surveying, and this is what Bristol means to and does say.

The very words, "Spur of marsh extend out north," show Bristol intended to call attention to a marsh north of the line he is running and separated by this line from the tract he is surveying. He consciously and purposely *excludes and bars out* the marsh from the tract embraced within the line he is surveying.

Further, *notice* that he does not say—"Jeems Bayou extend out north." No, he says, "Spur of *marsh* extend out north." He here points out that he is not surveying the bayou or meandering its shore, and says that north of this line he is running is—not the bayou, but a *marsh,* i. e., land. Something, the marsh, lay between this line and the water, which he does not include.

The call is not for the bayou or for water, but for the marsh.

In *Niles vs. Cedar Point Club,* 175 U. S., 300, this Court said, in discussing a similar case of a marsh omitted from the survey:

"* * * it (the meander line) indicated that there was something which had stopped the sur-

vey, which limited the area of the land which the United States was proposing to convey, and left to subsequent measurements the actual determination of the line of separation between the land conveyed and that which the Government did not propose to convey. Generally, these meandered lines are lines which course the banks of navigable streams or other navigable waters. Here, it appears distinctly from the field notes and the plat that the surveyor, Rice, stopped his surveys at this 'marsh' as he called it * * *. In *James vs. Howell,* 41 Ohio State, 696, 707, the Supreme Court of Ohio, speaking of these very patents and this marsh, said: 'The "meander" line along the southerly border of the marsh was, in fact, intended to be the boundary line of the fractional sections.' (306) * * * *swamp and boggy land is to be treated as land."* (308)

(8) In *II. Farnham on Waters and Water Rights,* Sec. 418, the further test as to whether a line is a meander line is given:

> Does the line itself omit large tracts of land lying between itself and the stream?

If it does, the line itself will not be regarded as a meander line, and will not extend the claim of the patentee beyond the lines run on the ground. If there be nothing but a narrow strip of land running between the meander line and the water, and the other tests just considered are complied with, then the court may hold that the line runs to the water; but if there is a much larger body of land than is included within the meander lines, lying outside of the same and between the meander lines and the water, then the court will not so hold.

The following quotation from Farnham is in full:

II. Farnham on Waters and Water Rights, Sec. 418:

A meander line as a rule is not the boundary but the water is:

> "But the quantities of land between the meander line and the water may be so great as to indicate that there was no intention of making the stream the boundary, or the facts of the case may be such as to show that the stream was not regarded as the boundary, and in such cases the boundary will not go beyond the line. * * * If the government surveyor omits to include large tracts of land between the meander line and the stream, the grant will extend only to the meander line, and not to the stream. (note) * * * As stated in *Fuller vs. Shedd* (161 Ill., 462, 33 L. R. A., 146) a grant of land by the government will be construed as bordering upon a stream or other natural body of water, although a *narrow strip* of land lies between the meander line as surveyed and the natural boundary, but *much smaller in proportion than* the land granted; but where the land outside the meander line is *so grossly in excess* of that sold that it is apparent there is fraud or mistake in the survey, the meander line will be the boundary."

If that test be applied in this case, then it is certain that this cannot be a meander line, because the quantity of land that intervenes between the meander line and the water is at least from three to four times (and probably seven or eight times) as large as is included within the meander lines themselves.

(9) Possession since 1871.

This line of Bristol was run in 1871. From 1871 (and, indeed, prior thereto) Pitts and his predecessors and successors were in actual occupation of the 12.84 acres of land included in lot number one. They were in neither occupation nor possession of any portion of the land in dispute. No one of them claimed any of the land outside of the boundary lines, which the plaintiff now claims are meander lines.

The agreement as to facts between the parties in this case (Rec., 38-39) stipulated that Noel purchased this property from Walsch in 1880, and that from that date down to April 15, 1910 (the date of the plaintiff's purchase), Noel's possession was—

> "limited on the East and North by the Bristol meander line, and said Noel never exercised any acts of corporal possession, or was ever in occupancy of any land in Section Four, East of or outside of the said meander line, or of any of the land in controversy."

That—

> "It is admitted by both parties, that the land in controversy is high land and was high land, at the date that Bristol made his survey in 1871."

Here, then, you have at least 40 or 45 acres of *high land* which it is now said by the plaintiff was owned by Noel from 1880 down to April 15, 1910, and yet Noel never occupied any portion of it; never cultivated it; never claimed title to it; and in no shape or form evidenced by any act of ownership that he claimed the same.

This is a most significant fact as to the intentions of the parties in the survey, in the patent and in the possession taken under it.

The survey was made in 1871; Pitts was then in possession. He and his successors, including Noel, remained in possession until April 15, 1910, and not a single one of them claimed that the survey was intended to include, or did include, this high land lying between the 12.84 acres, which Noel and Pitts cultivated, and the Jeems Bayou.

Thus, for over forty years, since the survey in 1871, this claim never was set up until the plaintiff bought, on April 15, 1910, and then the deed from Noel to the Producers Oil Company, the plaintiff (Rec., 16), only called for—

"Lots One and Two (1 and 2) in Section Four (4)," and the additional lots, which made up a total of 163.88 acres. This 163.88 acres was the total acreage under the two United States patents and the survey which Pitts received; Pitts never claimed any more; and now, in addition to this 163.88 acres, the plaintiff claims that it is entitled to from 40 to 87 acres more of high land between the so-called meander lines and the waters of Jeems Bayou.

(10) The possession of Pitts and his predecessors and successors, which it is admitted from 1880 to 1910 did not include the land in dispute, is further illuminating in this way:

Wilson, the first known occupant of the claim to which Pitts, and then the Producers Oil Company, suc-

ceeded, sold in 1858 to Ann Pitts, land described as follows:

> "All the improvement lying on and about the following described land, to wit: The S. E. ¼ of the S. W. ¼ and the S. W. ¼ of S. E. ¼ of Sect. No. 4, and East ½ of N. W. ¼ and West ½ of N. E. ¼ of Sect. (9) Nine, Township 20, Range 16, West of Northwestern land District of Louisiana, containing 160 acres more or less the fractional losses being considered.
>
> "Survey made by Haily Watts, then Parish Surveyor. (Please estimate)." (Rec., 24.)

So far as this took part of Section 4 it was

> "S. E. ¼ of the S. W. ¼ and the S. W. ¼ of S. E. ¼,"

and it does not cover the land in dispute.

As the quarter sections are now on the Williams map, this shows that originally the Wilson-Pitts' claim did not involve any of the land in dispute.

(III) THAT BRISTOL'S SURVEY LINE WAS NOT A TRUE MEANDER LINE IS CONCLUSIVELY SHOWN BY THE FACT THAT SOUTH OF HIS LINES LIES A TRACT OF OVER THREE HUNDRED ACRES ALONG THE BANKS OF JEEMS BAYOU, WHICH HE DID NOT ATTEMPT TO SURVEY.

In other words, Bristol left out of his survey a tract of land on the south which was larger in area than the land which he actually surveyed and included within his traverse lines.

A glance at the map prepared by Barbour, then Parish Surveyor, in 1896, and offered in evidence as Exhibit No. 18, and shown on the combination map in the record (p. 136), will show that south of the Bristol survey there lay a much larger tract, which Barbour subdivided into lots as follows:

Lot No.	1	84.61 acres;
	2	50.82 acres;
	3	57.71 acres;
	4	52.73 acres;
	5	42.40 acres;
	6	15.06 acres;
Total,		303.33 acres.

It is absurd to argue that a line which omitted from the survey more land than it included is a true meander line. The plaintiff attempts to escape from this dilemma by *admitting that the southern line of the Bristol survey is not a meander line at all,* but a boundary line.

But the fact of the omission of these three hundred acres on the south and the admission compelled by it, destroy plaintiff's entire case. If the Bristol survey line is not a true meander line on the south, because it leaves out a tract of land, by the same reasoning it cannot be and is not a meander line on the north, where it omits a much larger tract than lot one (1) to which it is sought to be annexed.

If the 300 acres lying south of the Bristol line are not included in the Bristol survey and the patent to Pitts, then logically and necessarily the 40 to 87 acres lying north of the Bristol traverse line are not included, and did not pass to plaintiff.

Conclusion.

Here, then, is a continual possession of the land claimed from 1858 down to 1910.

The Wilson claim Pitts took in 1858 did not by its description cover the land in dispute.

It covered only 160 acres.

Pitts was in possession until after the Bristol 1871 survey, and the extent of his actual possession is shown:

(1) By the extent of the claim which was 160 acres, for 40 acres of which he got a separate patent in 1878.

(2) His 40 acres was in addition to the 120 acres remaining, and in some way Pitts got the Gayle warrant which was for just 120 acres.

(3) Pitts had improvements,—corn field, home, enclosure, fences and roads,—and all these were located on his claim, and all within the 120 plus 40 acres.
Now, the 40 acres is not claimed to be part of the land in dispute. It is down in Section 9.

(4) The Bristol survey was to cover those improvements.
Noel, who sold to the plaintiff, the statement of facts admits, was never in possession of
"any of the land in controversy."

(5) Bristol so ran his lines as to cover those improvements which ate up all the land Pitts could pay for with the Gayle warrant,
and

therefore, Bristol did not run his line so as to cover the land in dispute, i. e., forty to eighty-seven acres more.

THE LINE CALLED A MEANDER LINE of Jeems Bayou in this case in connection with lot No. 1 of section four is not a meander line in the sense defined by this Court, because—

(a) The purpose of it was not to locate by an undulating line the sinuous banks of Jeems Bayou and the water abutting thereon, but to survey off in connection with six different lots a total acreage of 123.88 acres of land;

(b) It does not follow the sinuosities of the banks of the stream;

(c) It is not located along the banks of the stream and near thereto;

(d) It shows large quantities of land lying between it and the stream, much larger than the quantity of land comprised in the survey; and in this case the land now claimed to be covered is greatly in excess of the land actually surveyed;

(e) If one will examine even the plaintiff's maps in this case showing the location of the waters of Jeems Bayou bounding on the north and the south and the east the land in dispute, and then notice on the map (even as the plaintiff's Exhibit shows) the so-called meander line, it is a demonstration that the said line is defective in all the requirements, as hereinbefore noted, to make it a meander line.

It does not follow the sinuosities of Jeems Bayou. It is not run at any place along the

banks of Jeems Bayou. It is not located reasonably near the water in Jeems Bayou. It leaves large bodies of land between it and the water of Jeems Bayou. The official plat of the Bristol survey does not show that the call or boundaries of the survey were for the waters of Jeems Bayou—but, on the contrary, the official plat repeats the lines of the survey as a traverse to identify the land to be sold. The lines and survey of the whole six (6) lots were for the same purpose—not to mark the sinuosities of the banks and waters of Jeems Bayou, but to include within the lines the property sold. The so-called meander line of Bristol extended would not line up with the sinuosities of the Jeems Bayou banks and stream.

(IV) THE STATEMENT OF BRISTOL IN HIS NOTES AS TO THE MEANDER OF JEEMS BAYOU CANNOT CONTROL IN THE CONSTRUCTION OF THE PATENT.

Attention is especially called to the fact that Bristol did not by survey establish where the banks of Jeems Bayou were, nor did he divide the tract surveyed into lots. When his notes of survey were returned to the United States Land Office, that office divided the survey into lots, and it endeavored by the lots to show the one hundred and twenty acres that under the Gayle warrant were to be conveyed to Pitts. It was impossible for the Land Office to *accurately* locate the waters of Jeems Bayou, for Bristol gave no data to do so. The supposed water line shown on the Bristol map is an imaginary line and purely suggestive that there was water some place. For example, the water line as

shown by Bristol's map surrounding lot One on the right of the line beginning N. 2° E. 6 chains, shows a palpably large area outside of that actual line prolonged and the water. Now evidently the Land Office map, in determining what was to be conveyed to Pitts, did not include this outside land, but used the line beginning N. 2° E. prolonged as an actual boundary line excluding the land outside of it. That this is exactly what the Land Office did is demonstrated by the calculation of the area of lot No. 1 as 12.84 acres and no more, and incorporating that in the patent.

The case must turn on the question—

Did the United States, by its patent to Pitts, intend to make the waters of Jeems Bayou the boundary line of lot No. One in section four (4), and thus convey to Pitts when it conveyed lot No. One, not merely the 12.84 acres marked on the Bristol plat as the contents of lot No. One, but, *in addition* to that quantity, to also convey the land now in controversy containing, say, forty (40) to eighty-seven (87) acres lying between the boundary line of lot No. One and the waters of Jeems Bayou?

The burden is on the plaintiff to show that such was the intention of the Government, and, when sifted, its case rests on the following extract from the Bristol notes of survey:

"Meanders of the left Bank of Jeems Bayou begin at the corner between fractional sections 9 and 4, a gum tree at 24.50 West of the corner of sections 3, 4, 9 and 10; run thence down stream in fractional sec. 4." (Rec., 29.)

This Court said in the case of *French-Glenn Live Stock Co. vs. Springer,* 185 U. S., 47, that the words in a survey—

> "Meander of the south shore of Malheur Lake did not of themselves control the patent or determine the acreage sold."

To the same effect see *Chapman vs. St. Francis,* 232 U. S., 186, 196-197.

The argument hereinbefore made, we submit, demonstrates that Bristol did not intend that the waters of Jeems Bayou should be the boundary line of lot No. One. Without repeating, let us call attention to just one fact among many we there mentioned, which demonstrates that:

> One of his courses is—
> S. 86½ degrees W. 2.50 spur of
> marsh extend out North.

He did not survey that spur; he knew it was land. He did not intend to include it, but he did intend to exclude it for he then ran *away* from it by running S. 57 degrees W. 4.50. He did not follow north to the waters of Jeems Bayou but ran away from them.

Well, if this is so, as this marsh runs to Jeems Bayou, he did not intend to make the waters of Jeems Bayou the boundary line of lot No. One.

When his notes are returned to the Land Office, they are platted there, and the Surveyor General undoubtedly considered the *boundary* lines of lot No. One as the

actual traverse lines, and did not consider the waters of Jeems Bayou as the boundary. He calculated the entire area of lot No. One as 12.84 acres and did not include as part of lot No. One the high land, which is outside of the actual traverse lines of lot No. One and between those lines and Jeems Bayou. The patent followed the plat. It conveyed a total of 123.88 acres—

> "according to the official plat of the survey of said lands returned to the General Land Office by the Surveyor General."

And this 123.88 acres was made up, as the patent on its face says, of—

> "Lots numbered one, two, three and four of Section Nine, and the lots numbered one and two of Section Four."

The contents of each of these lots is, according to the plat,—

Section Four:		
	Lot 1,	12.84
	Lot 2,	11.44
Section Nine:		
	Lot 1,	14.76
	Lot 2,	26.20
	Lot 3,	39.96
	Lot 4,	18.68
	Total,	123.88

Is it not, therefore, a demonstration that the Land Office made its plat from the Bristol survey, and in so

doing, took the actual traverse lines of lot No. One as the boundaries of such lot, and calculated its entire area as 12.84 acres and did not include the land which was outside of these traverse lines, which outside land is the land in dispute?

Is it not plain—

That this 12.84 acres inside the actual traverse lines is all the United States intended to convey to Pitts,—all it did convey,—all Pitts paid for,—all he expected to obtain under the patent?

And are not the facts—

That Pitts never claimed this outside land and never occupied it; that from the survey in 1871 down to April 15, 1910, when the Producers Oil Company bought, no one of its predecessors in title ever occupied or claimed this outside land,

strongly persuasive of the same conclusion?

The mere fact that Bristol, in his notes of survey, said—

"meanders of the left bank of Jeems Bayou,"

cannot control as against the admissions of facts in this case and the facts hereinbefore urged.

Such a statement certainly cannot control the patent and plat which fixed the acreage of lot No. One at 12.84 acres and excluded the high land, as before stated.

THE SO-CALLED BRISTOL MAP.

Bristol returned to the Land Department no plat, but only his notes of survey. These notes gave accurately and in detail the courses and distances necessary to plot his traverse line, *but no data to show the true water line of Jeems Bayou.* Any water line attempted to be represented on the map by the draftsman in the Land Office would therefore be purely conjectural.

Furthermore, Bristol's notes did state in so many words that north of his traverse line lay,—not Jeems Bayou,—but a

"spur of marsh extend out north."

The government surveyor made no pretense of indicating this marsh on the map, and this although it is settled under the Federal decisions that "marsh" is *land,* not water. This in itself is a demonstration that the water line shown on the government map was tentative merely, and could not have been intended to conclude the question of the location of Jeems Bayou.

Indeed, the marsh could not have been platted accurately on the map because Bristol had not surveyed it. And the failure of the map to indicate the presence of the marsh which Bristol said lay north of his traverse line, shows that the question of the amount of land north of his line was left open for future survey and determination, just as in the earlier surveys and plats no attempt had been made to show any of the land later settled upon by Pitts.

The agreed stipulation as to facts in this case (*supra*, p. 11, *et seq.*) shows conclusively that north and east of the Bristol traverse line at the time of the Bristol survey in 1871 was the "high land in controversy",—40 acres according to plaintiff,—87 acres according to defendants. This stipulation is conclusive upon plaintiff that the bayou did not approach the Bristol traverse line.

> The Bristol map is so small that there is no accurate way of judging the distance between the so-called Bristol meander line and the water of Jeems Bayou. The map is not drawn so as to prove what that distance is, and we have to turn to the Williams' map of the plaintiff (Exhibit F-2), or the Barnes' map of the defendant (Exhibit No. 2), where that distance has been actually surveyed and closely determined to find that out.

Under the decisions of this Court extraneous proof is admissible to show what was in fact the true location of the lake or Jeems Bayou. It is permissible to show that in fact the water line did not even roughly correspond with the Bristol traverse, but that between it and the bayou lay a tract many times larger than lot one (1) to which plaintiff would annex it.

In *Graham vs. Gill*, 223 U. S., 643, in an action of ejectment, evidence was held admissible to show that an island lay wholly outside the line within which it was shown upon the government plat and field notes of survey.

Chief Justice White said (644-645):

> "It is insisted that the writ of error should be dismissed because no Federal question is involved.

The contention, however, is without merit, since repeatedly during the trial the plaintiffs objected to the admission of all evidence bearing upon the location of the tract in controversy other than the field notes of the survey under which the plaintiffs claimed, which it was contended were the best and only evidence. In passing adversely on these objections the trial court did not merely determine the weight or sufficiency of the evidence to prove a fact, but passed on the competency and legal effect of the evidence as bearing upon the question of Federal law, viz., the effect of the requirements of Sec. 2396, Rev. Stat., as to the mode of surveying public lands. Thus a Federal question was presented and decided. * * *

"Although, however, the Federal question was necessarily involved and decided, we are of opinion that under the circumstances of this case it comes directly within the rule announced in *French-Glenn Live Stock Co. vs. Springer, supra,* (185 U. S., 47, 54) and therefore the state court was right in holding that the defendant was not debarred from introducing evidence other than the field notes which had a legitimate tendency to identify the precise location of the tract occupied by him, although such evidence might tend to show a mistake in the field notes of the survey of the tract which the plaintiffs claimed."

The Court below affirmatively found, *inter alia,* certain facts:

(a) It is admitted by both parties that the land in controversy IS HIGH LAND AND WAS HIGH LAND

at the date that Bristol made his survey in 1871." (Record, p. 129.)

(b) That according to the plaintiff's estimate the land in dispute is some forty acres, and according to defendants' estimate some eighty-seven acres. (Record, pp. 127, 128.)

(c) "These portions of land do not appear to have been claimed by Alfred Wilson at the time that he sold to Ann Pitts." (Record, p. 127.)

(d) "The possession of the land in controversy contended for by plaintiff is a constructive, and not an actual, possession of that land. It admits that it and its authors in title never were in actual occupancy of said land; but it claims that it is and was in actual occupancy of lot No. 1 as defined on the notes of surveyor Bristol, and that it is and was in constructive possession of the remainder of the land between the established meander line and James Bayou on the east and north of said lot, which is an occupancy of the whole, under the decisions in *Sallier vs. Bartley,* 113 La. R., 400, and *Jones vs. Gossett,* 115 La. R., 926." (Record, p. 129.)

(e) "As plaintiff and its authors held no title to the land referred to it has had neither actual nor constructive possession of the same, and cannot therefore be heard to complain of the acts of these defendants. Its demand for possession must be denied." (Record, p. 130.)

(f) "A glance at the annexed map (Record, p. 136), taken from the Williams and Barnes

maps in the record (Bristol made no map or plat, and the one made by the draftsman in the Land office is very small and apparently without reference to a scale) shows that the Bristol meander line does not purport to define the sinuosities of a stream; it is not represented as the border line of a stream, and it shows, to a demonstration, that the meander line, as actually run on the land on the east and northeast of lot No. 1, is the boundary, and that a water course is not the boundary." (Record, pp. 130, 131.)

(g) "The evidence in the record in this case, aside from the admissions of record, show that there was and is a large quantity of swamp or marsh land on the east and north of the Bristol meander line." (Record, p. 133.)

Such findings of facts are conclusive and will not be reviewed by this court.

In *Chapman vs. Bigelow*, 206 U. S., 41, 44-45, this court declined to examine the findings of fact of the Supreme Court of Arkansas as to the character of lands lying between an alleged meander line and the water, saying that the State Court had—

"ruled that in an action to quiet title to wild and unoccupied lands, which the court found these were, plaintiff must succeed, if at all, on the strength of his own title, and not on the weakness of his adversary's; that swampy lands, checked by bayous, subject to inundation, but reclaimable to some extent for agricultural purposes, lying between the Government meander line and the main channel of

a river, were not lands the title to which would pass to the grantee by virtue of riparian rights; that such was the character of the lands in controversy, and that plaintiff had failed to show such a condition in respect of them as would support its claim to riparian rights; that the evidence showed that the elevation of the swampy land between the meander line of plaintiff's land and the main course of the St. Francis River had not changed since the running of the meander line; and that the meander lines were boundaries.

"In view of the decisions of this court in *Horne vs. Smith,* 159 U. S., 40; *Niles vs. Cedar Point Club,* 175 U. S., 300; *Calumet Canal and Improvement Company vs. Kean,* 190 U. S., 452; *Iowa vs. Rood,* 187 U. S., 87; and other cases, and of the findings of the court below, we are of opinion that the jurisdiction of this court to revise the conclusions of that court cannot be maintained. *Moreland vs. Page,* 20 How., 522; *Lanfear vs. Hunley,* 4 Wall., 204; *Dower vs. Richards,* 151 U. S., 658; *Egan vs. Hart,* 165 U. S., 188; *Israel vs. Arthur,* 152 U. S., 355; *Hardin vs. Shedd,* 190 U. S., 508; *Romie vs. Casanova,* 91 U. S., 379."

But these facts conclude the plaintiff's case. As the land intervening between the so-called meander line around lot No. one and the water of Jeems Bayou was from four to eight times as great as the contents of Lot No. One marked on the Bristol map which Pitts paid for—and as at the time of the survey this was all high land—it was not overflowed with water—these facts in connection with the survey lines of Bristol covering the improvements on the 123 acres which Pitts

bought from the United States by the Patent of 1892, make it impossible to gravely contend that the Bristol line around Lot No. One was a real meander line calling for the waters of Jeems Bayou.

COTTON SHED ARM.

The court's attention is called to the following fact: If the Williams' survey and the Barnes' survey be compared, and then the testimony of the witnesses named below be looked at, it will be found that the cotton shed arm, so-called by Williams, of Jeems Bayou extending to a point in the S. W. quarter of the S. E. quarter of Section 4, being the quarter-quarter section in which lot No. 1 is located, is incorrect and misleading. That cotton shed arm does not touch that quarter-quarter section of Section 4. It does not come near lot No. 1, but it on the contrary, according to the scale of the Williams' map, is distant therefrom at least 600 feet from the nearest point of lot No. 1. *Indeed, Williams himself merely speculates as to where this cotton shed arm was in 1871 when Bristol made the survey.* He has no evidence to show that it was located where he has located it on his map. When Williams made the survey himself on December 16, 1910, it will be seen that he located the water line of Jeems Bayou at least 1,000 feet distant from lot No. 1, and it did not at all touch the quarter- quarter section in which lot No. 1 is located. Barnes testified that the distance to cotton shed arm was much greater. (Record, pages 109-110). The defendants' witnesses testified that the area in question between lot No. 1 and the Barnes water line is filled with grass and small green cypress which do not grow on land covered with water, whereas the ter-

ritory east of Barnes' water line is filled with large, swell-butt cypress. See testimony of Barnes (Record, pages 60-66, 68-70, 78-80); Montgomery (86-87); Martin (89-93); Loyd (106-107); Griggs (112-113); Mason (115-118); and photographs, Exhibits Nos. 1 to 12 and 19 to 26.

Bounty Land Warrants.

Revised Statutes, Sec. 2418, provides that persons serving in the War of 1812 or the Mexican War or any of the Indian wars should receive warrants for lands, the number of acres being determined by the length of service and the rank of the soldier.

Section 2415 provides that warrants

> "which have been or may hereafter be issued in pursuance of law may be located according to the legal subdivisions of the public lands in one body upon any lands of the United States subject to private entry at the time of such location at the minimum price. When such warrant is located on lands which are subject to entry at a greater minimum than one dollar and twenty-five cents per acre, the locator shall pay to the United States in cash the difference between the value of such warrants at one dollar and twenty-five cents per acre and the tract of land located on."

Section 2416 provides that persons holding bounty warrants may

> "enter in quarter sections, at the proper local land-office in any of the States or Territories, the quantity of the public lands subject to private entry which he is entitled to under such warrant."

Section 2417 says:

"All warrants for bounty-lands referred to in the preceding section may be located at any time, in conformity with the general laws in force at the time of such location."

Section 2423:

"Every person for whom provision is made by sections twenty-four hundred and eighteen and twenty-four hundred and twenty shall receive a warrant from the Department of the Interior for the quantity of land to which he is entitled; and, upon the return of such warrant, with evidence of the location thereof having been legally made to the General Land Office, a patent shall be issued therefor."

Defendants Call Especial Attention to the Cedar Point Case and the Following Cases:

In *Niles vs. Cedar Point Club,* 175 U. S., 300, the syllabus of the case reads thus:

"Generally, in public surveys, a meander line is a line which courses the banks of navigable streams or other navigable waters; but in this case it distinctly appears from the field notes and the plat, that the deputy surveyor by whom it was surveyed in 1834 and 1835, and whose acts were approved by the surveyor general, stopped his surveys at what he called a marsh, which intervened

between the point where he stopped and the waters of Lake Erie, and thus limited the land which the United States in 1844, following that survey, patented to the person under whom the appellant claims, and thus excluded the marsh, leaving to subsequent measurements the actual determination of the line of separation between the lands thus patented, and those which the Government did not propose to convey.

"One receiving a patent will not ordinarily be heard to insist that by reason of an error on the part of a surveyor, more land was bought than was paid for, or than the Government was offering for sale."

The court, delivering the opinion, said (305):

"But little can be added to the opinion of the Court of Appeals, whose conclusions we approve. The meander line run by surveyor Rice along the northern borders of the tracts patented to Margaret Bailey may not have been strictly a line of boundary, *Railroad Company vs. Schurmeir,* 7 Wall., 272; *Hardin vs. Jordan,* 140 U. S., 371, 380; *Horne vs. Smith,* 159 U. S., 40; but it indicated that there was something which had stopped the survey, which limited the area of the land which the United States was proposing to convey, and left to subsequent measurements the actual determination of the line of separation between the land conveyed and that which the Government did not propose to convey. Generally, these meandered lines are lines which course the banks of navigable

streams or other navigable waters. Here, it appears distinctly from the field notes and the plat that the surveyor, Rice, stopped his surveys at this 'marsh' as he called it * * *. In *James vs. Howell,* 41 Ohio State, 696, 707, the Supreme Court of Ohio, speaking of these very patents and this marsh, said: 'The "meander" line along the southerly border of the marsh was, in fact, intended to be the boundary line of the fractional sections.' * * *

"The United States sold only the fractional sections, received only pay therefor, an amount fixed by the number of acres conveyed, and one receiving a patent will not ordinarily be heard to insist that by reason of an error on the part of the surveyor more land was bought than was paid for, or than the Government was offering for sale. * * *

"Of course, if the fractional sections patented to Margaret Bailey did not border on some body of water there were no riparian rights, and if the conclusion of the trial court that this marsh was land (*for swamp and boggy land is to be treated as land*) was correct, then whatever changes may have come to the marsh—whether it became more or less subject to overflow—would not alter the fact that the rights of Margaret Bailey, the patentee, were limited to the very lands which were conveyed to her, and for which she paid, and did not extend over the meander line into the territory north.

"But, it is urged, that the fact that a meandered line was run amounts to a determination by the land department that the surveyed fractional sections bordered upon a body of water, navigable

or non-navigable, and that, therefore, the purchaser of these fractional sections was entitled to riparian rights; and this in face of the express declaration of the field notes and plat, that that which was lying beyond the surveyed sections was 'flag marsh,' or 'impassable marsh and water.' But there is no such magic in a meandered line. All that can be said of it is that it is an irregular line which bounds a body of land, and beyond that boundary there may be found forest or prairie, land or water, Government or Indian reservation." (308)

Notice that the court said:

"Generally, these meandered lines are lines which course the *banks* of navigable streams or other navigable waters."

Now, the Bristol so-called meander line did not course the banks of any navigable stream or water. The *navigable* water was (looking from section line of four north) to the west and north of the line in question. These lines in question certainly did not run along the bank of this navigable water. That bank was (still looking north) away to the west. The bank *itself* did not include the bayou itself, with its large extent, covering a large area and with undulating lines of still water far distant from the bank itself. This was not navigable. It was marsh.

Is it not rather a traverse line fixing a boundary?

As the Supreme Court said, quoting from *James vs. Howell,* 41 Ohio State, 696, 707:

> "The 'meander' line along the southerly border of the marsh *was, in fact, intended to be* the boundary line of the fractional sections."

Then, too, the Cedar Point case closely resembles ours because it involved a point—or tongue of land—and the surveyor, coming to the place he called a marsh, stopped the survey, indicating, the Supreme Court said, that—

> "there was something which had stopped the survey which limited the area of the land which the United States was proposing to convey."

So in our case, as in the Cedar Point case, the—

> "United States sold only the fractional sections, received only pay therefor, an amount fixed by the number of acres conveyed;"

and the patentee, as a rule,—

> "will not ordinarily be heard to insist * * * *more* land was bought than was paid for."

French-Glenn Live Stock Co. vs. Springer, 185 U. S., 47:

The field notes of the survey in this case were entitled "Meanders of the south shore of Malheur Lake," and the official plat showed at the north of the fractional section a meander line running along the lake shore.

The plaintiff was the patentee of the lots shown in the survey and claimed title to the strip north of the meander line, averring it had been created by the recession of the waters of the lake. The defendant contended that the lake had not receded and had never been close to the meander line.

In affirming judgment for the defendant, the Supreme Court said:

> "The land in dispute, in the possession of the defendant in error, was not included within the lines of the original survey, nor in the description of the lots contained in the patents and in the deeds of conveyance under which the plaintiff in error holds, and to add the land in controversy to the lots so described would more than double the area of the land claimed by the plaintiff in error; but the contention of the plaintiff in error was, in the courts below and now is, in this court, that, as the plaintiff in error bought in reliance upon the plats and patents which showed the meander line of the lake, such plats and patents must be deemed to conclusively establish that the lake was the northern boundary of the land, so far as the rights of riparian grantees are concerned. (50-51) * * *
>
> "While it may be conceded that the description of the lots contained in the survey, plats and patents are conclusive as against the government and holders of homesteads, so far as the lands actually described and granted are concerned, such conclusive presumption cannot be held to extend to lands not included within the lines of the survey, and which are only claimed because of the alleged existence of a lake or body of water bounding said lots, whose recession has left bare land accruing to

the owners of the abutting lots. We agree with the Supreme Court of Oregon in thinking that the question whether the northern boundary of the lots of the plaintiff in error was an existing lake, thus laid bare, to accrue to the owner of the lots, *was a question of fact which was not concluded by a mere call for a meander line.* If, indeed, there had been a lake in front of these lots at the time of the survey, which lake had subsequently receded from the platted meander line, the claim of the owner of the lots to the increment thus occasioned might be conceded to be good, if such were the law of the State in which the lands were situated. But if there never was such a lake—no water forming an actual and visible boundary—on the north end of the lots, it would seem unreasonable, either to prolong the side lines of the survey indefinitely until a lake should be found, or to change the *situs* of the lots laterally in order to adapt it to a neighboring lake. The jury having found that the facts under this issue were as claimed by the defendant in error, the conclusion must be that the rights of the plaintiff in error must be regarded as existing within the actual lines and distances laid down in the survey and to the extent of the acreage called for in the patents, and that the meander line was intended to be the boundary line of the fractional section." (51-52)

Security Land & Exploration Co. vs. Burns, 193 U. S., 167:

In this case the court held that the so-called meander line was a boundary line and that the title of

the patentee could not be extended to include a tract of land lying between the meander line and the lake.

Mr. Justice Peckham said:

"The difference between the number of acres stated in the patents to be in each lot and the number now claimed by the plaintiff in error is very large, and is subsequently referred to herein. It seems plain that the intention was to convey no more than the number of acres actually surveyed and mentioned in the patents. In *Ainsa vs. United States* (*supra*), this is deemed to be a very important and sometimes a decisive fact. (180). * * * If the side lines of the various lots were projected in their course, those of lot 3 would never reach the lake, and those of lots 5 and 6 would not reach the lake within the limit of section 4, while the south line of lot 7 would touch the lake, and a few feet of frontage would then be secured, and that lot would then have 139 instead of 25.25 acres. The side lines of lots 5, 6 and 7, if protracted, would instantly cross the protracted side lines of lot 3. *In order to bound on the lake the lots would exhibit a totally different form from that which they take on the plat of survey* and such boundary would violate every rule of statutory survey, by conveying lands not conforming to the system adopted by the government and carried out ever since its adoption.

"The patentees, it must also be borne in mind, get all the land they really purchased and paid for, as laid down by the lines and distances set forth in the survey and as stated in the patents. These lines and distances (of lots 3, 5, 6 and 7) gave the pat-

entees 140.87 acres of land, and that was the amount they paid for, while if the fourth line of the boundary of the lots were taken out and others substituted in the way shown by the dotted lines in the plat in 189 U. S. *supra,* and so as to reach the borders of the lake as it then actually existed and now exists, they would get 571 acres, or fourfold more land than was actually mentioned and described in the patents conveying these four lots, or than they supposed they were purchasing, or than they actually paid for. (181) * * *

"As is said in the trial court in this case, *there must be some limit to the length courts will go in search of the water delineated on a plat of survey, with a meander line shown thereon.* If the water were ten miles away, it is certain that a claim to be bounded thereon would not for one moment be admitted. *A distance of half a mile, enough to plainly show the gross error of the survey, together with the other facts adverted to herein, are sufficient to justify a refusal to apply the general rule that a meander line is not usually one of boundary.*

"Nor in such case is it necessary to go into equity to reform the patent. Where the patentee has in fact received and is in possession of all the land actually described in the lines and distances, and is seeking for more on the theory that his plat of survey carries him to the water, a denial of that claim upon such facts as appear here is well founded, and requires no reformation of the patent. It is simply a question of boundary, and it is a legal defence, it is but a denial that the land claimed is in fact included in the patent as it exists, and no aid of a court of equity is necessary to sustain such a defence." (183)

The same principle is laid down in an earlier decision of Mr. Justice Miller, sitting as Circuit Justice:

Granger vs. Swart, 1 Woolw., 88, Fed. Cas., No. 5685.

Chapman vs. St. Francis, 232 U. S., 186, 196-197 (1914):

In this case the Government granted a tract of land to the State of Arkansas, described in the patent as follows:

> "Township 12 North of Range 7 East. The whole of the Township (except Section sixteen), containing thirteen thousand, eight hundred and fifteen acres and sixty-seven hundredths of an acre * * * according to the official plats of survey of said lands returned to the General Land Office by the Surveyor General."

The Government plat showed a meander line and a total area of 14,329 acres within its limits, and outside the meander line lay another unsurveyed tract marked "Sunk Lands," embracing an additional area of 8,000 acres.

The Supreme Court held that the area outside the meander line did not pass under the patent, Mr. Justice Van Devanter saying:

> "Of course, the words in the patent 'The whole of the Township (except Section sixteen)' are comprehensive, but they are only one element in the description and must be read in the light of the others. The explanatory words 'according to the official plats of survey of said lands returned to the General Land Office by the Surveyor General'

constitute another element, and a very important one, for it is a familiar rule that where lands are patented according to such a plat, the notes, lines, land-marks and other particulars appearing thereon become as much a part of the patent and are as much to be considered in determining what it is intended to include as if they were set forth in the patent. *Cragin vs. Powell,* 128 U. S., 691, 696; *Jefferis vs. East Omaha Land Co.,* 134 U. S., 178, 194. The specification of the acreage is still another element, and, while of less influence than either of the others, it is yet an aid in ascertaining what was intended, for a purpose to convey upwards of 22,000 acres is hardly consistent with a specification of 13,815.67 acres. *Ainsa vs. United States,* 161 U. S., 208, 229; *Security Land Co. vs. Burns,* 193 U. S., 167, 180; *3 Washburn on Real Property,* 5th ed., 427. Giving to each of these elements its appropriate influence and bearing in mind that the terms of description are all such as are usually employed in designating surveyed lands, we are of opinion that the purpose was to patent the whole of the lands surveyed, except fractional section 16, and not the areas meandered and returned, as shown upon the plat, as bodies of water. That it is now found, as shown by the decisions below, that these areas ought not to have been so meandered and returned, but should have been surveyed and returned as land, does not detract from the effect which must be given to the plat in determining what was intended to pass under the patent. *Niles vs. Cedar Point Club,* 175 U. S., 300, 306; *Hardin vs. Shedd,* 190 U. S., 508, 520."

See also--

Scott vs. Lattig, 227 U. S., 242.

The courts of the different states have uniformly held that a so-called meander line will be treated as a boundary line where it does not in fact follow the banks of the water and the intent is not plain to make the water the boundary line:

NEBRASKA:

Lamers vs. Nissen, 4 Neb., 245;
Bissell vs. Fletcher, 19 Neb., 725.

ILLINOIS:

Fuller vs. Shedd, 161 Ill., 462; 33 L. R. A., 155;
Shoemaker vs. Hatch, 13 Ill., 261, 266.

IOWA:

Glenn vs. Jeffrey, 75 Ia., 20;
Grant vs. Hemphill, 92 Ia., 218;
Schlosser vs. Hemphill, 118 Ia., 452, 455;
Barringer vs. Adams, 141 Ia., 419, 428.

OHIO:

James vs. Howell, 41 O., 696.

OREGON:

Barnhart vs. Ehrhart, 33 Ore., 274;
Little vs. Pherson, 35 Ore., 51.

TEXAS:

Fulton vs. Frandolig, 63 Tex., 330.

INDIANA:

Tolleston Club vs. Lindgren, 39 Ind. App., 448, 452, 453.

See generally, *II. Farnham on Waters,* Sec. 418.

Plaintiff's Cases.

Hardin vs. Jordan, 140 U. S., 371;
Mitchell vs. Smale, 140 U. S., 406.

These cases were relied upon by the plaintiff in the Court below.

The government map in these cases is shown on page 373 of the report (*Hardin vs. Jordan, supra*). There was a tongue of land extending from the northern end of the lake in a southerly direction, which was not shown on the official map.

This government map (373) did not show a meander line at all, but showed only the water line of the lake and represented the fractional section as fronting directly on the lake; it showed no meander line or strip of land between the meander line and the water line.

In each case, the patent described the land conveyed merely by referring to the government map, which showed the lot fronting on the lake, and the court held that this incorporated the map and amounted to a call for a lake as the boundary.

Not only do the facts differ, but these cases involved a totally different principle from that sought to be applied in our case.

The question involved was not whether the patent carried the title to the water line, but whether it carried to the *middle* of the lake.

In the Jordan case, the land covered by the patent was on the west side of the lake, and although the court held that the patent conveyed the land to the middle of the lake, it did not carry it far enough to reach this tongue running down from the north end, and therefore the tongue of land was not involved in this case. (399)

The point on which the court based its decision in *Hardin vs. Jordan,* was stated as follows:

> "It will be observed that the government surveys made in 1834-5 upon which the patent was issued, not only laid down a meander line next to the lake, but also described said lines as running *'along the margin of the lake;'* and the plat of the survey, returned to the general and local land offices, and referred to in the patent for identification of the land granted, *exhibited the granted tracts as actually bordering upon the lake."* (379-380)

In *Mitchell vs. Smale,* the patent called for the land in front of which lay the tongue. The court held that the patent carried not only the tongue, but also all the bed of the lake to the center line of the lake.

In the Mitchell case, the losing party argued that the existence of this tongue was inconsistent with the water being a natural boundary, that is, that its existence rebutted the legal presumption that the patent calling for the lake carried the title to the middle of the lake. The point in controversy was not merely the tongue of land as such but all the land (including that covered by water) as far as the middle line of the lake.

In the Mitchell case, it also appears (414) that in times of high water—

> "very little of the said projecting tongue of land would be visible."

The ground on which the court based its decision in *Mitchell vs. Smale* is stated as follows:

> "The official plat made from such survey does not show the meander line, but shows the general form of the lake deduced therefrom, and the surrounding fractional lots adjoining and bordering on the same. The patents when issued refer to this plat for identification of the lots conveyed, and are equivalent to and have the legal effect of a declaration that they extend to and are bounded by the lake or stream. Such lake or stream itself, as a natural object or monument, is virtually and truly one of the calls of the description or boundary of the premises conveyed; and all the legal consequences of such a boundary, in the matter of riparian rights and title to land under water, regularly follow." (413)

But in this case the court stated the rule as to meander lines in accordance with our contention:

> "We do not mean to say that, in running a pretended meander line, the surveyor may not make a plain and obvious mistake, or be guilty of a palpable fraud; in which case the government would have the right to recall the survey, and have it corrected by the courts, or in some other way. Cases have happened in which, by mistake, the meander line described by a surveyor in the field-notes of his sur-

vey did not approach the water line intended to be portrayed. Such mistakes, of course do not bind the government." (413)

Whitaker vs. McBride, 197 U. S., 510:

This case involved the title to an island in the river. The Supreme Court held that the title was governed by the law of Nebraska, according to which a deed bounded on a river carried the title to the middle line of the river. As the island was between the middle line of the river and the shore, this decision carried the title to the island. This is all that was in the case.

The court said (511):

"The decision of the Supreme Court of the State was that the owner of lands bordering on a river owns to the center of the channel, and takes title to any small bodies of land on his side of the channel that have not been surveyed or sold by the Government. It is the settled rule that the question of the title of a riparian owner is one of local law. * * *

"If there were no island in this case it would not, under these authorities, be questioned that the title of the riparian owners extended to the center of the channel. How far does the fact that there is this unsurveyed island in the river abridge the scope of the rule?"

Bonis vs. James, 7 Robinson (La.), 149, 152:

The patents in this case described the lands as "containing eighty arpents in front, *on the right bank of the Mississippi,* by forty arpents in depth."

In speaking of this claim the court said:

"The main question in the cause is, was it intended that the claims of Bouligny should front on the river? When we take into consideration the usages and laws under the Spanish government, they raise a strong presumption that such was the intention. When we look at the confirmation of the titles by the United States, we see the lands described as *on the right bank of the river.* These terms are not generally used to describe land lying at a distance from the bank."

In the patent and in all the conveyances the land was described as *on the river.*

(V) WHETHER THE DEFENDANTS COULD, UNDER THE STATE LAWS OF LOUISIANA, DEFEND AS AGAINST THE PLAINTIFF AND CLAIM THE PLAINTIFF WAS NOT THE OWNER OF THE LAND OR ENTITLED TO THE POSSESSION THEREOF, WAS AND IS A QUESTION UNDER THE STATE LAW OF LOUISIANA UPON WHICH THE DECISION OF THE SUPREME COURT OF LOUISIANA IS CONCLUSIVE. IT IS NOT A FEDERAL QUESTION, AND THE SUPREME COURT OF THE UNITED STATES WILL NOT REVIEW THE JUDGMENT OF THE STATE COURT.

Judge Provosty's dissenting opinion is based solely on a State question. He says (Rec., p. 141):

"The defendants, at the time of the institution of the present suit, were mere possessors, without any

right whatever. Their mere possession had not yet given birth to any right. They were, as yet, mere settlers. They base their claim of right exclusively upon the fact of their having located the land under the mining laws of the United States. These laws (Sec. 2320 U. S. R. S.) expressly provide that 'no location of a mining claim shall be made until the discovery of the vein or lode within the limits of the claim located;' and in the case of *Creede and C. C. M. & M. Co. vs. Ninta T. M. & T. Co.*, 196 U. S., 337-352, the Supreme Court of the United States says: 'a locator does not acquire the right of exclusive possession unless he has made a valid location, and *discovery* is essential to its validity. The language of the statute makes that plain. * * *

"True, if the plaintiff were itself without any right or color of right it would have no standing for dispossessing defendant (*Turpey vs. Madsen*, 178 U. S., 215-220), and, hence, in a certain sense, the defendants may be said to have had, at the date of the institution of the suit, some right growing out of the mere possession; but while this right will afford a standing for resisting a mere intruder, it will not sustain a defense against one with color of title such as the plaintiff presents in this case. * * *

"The fact that the defendant made a discovery of petroleum can have no influence upon the case, as the discovery was made after the suit had been brought. The rights of the parties must be determined as of the date of the filing of the suit." (Rec., p. 142.)

His Honor, therefore, held:

(a) That the plaintiff had color of title to the land in dispute;

(b) That the defendants had no right to the possession of the property or any title or claim to the same which would enable them to defend in this action under the laws of Louisiana relating to possessory actions.

His dissent, then, was purely on a question of the State law of Louisiana.

The *majority opinion* of the Court (see *supra*, pages 5 to 7) held directly contrary to that of the dissenting judge and said that it was clear that the defendants had such right in the land as made them more than trespassers and enabled them to defend in this action against the plaintiff; that the plaintiff had not even color of title to any of the land in dispute and had never been in possession of any of the same; that under the law of Louisiana, the defendants could set up such defense.

Whether under the laws of Louisiana the defendants can defend as against the plaintiff's action, is purely a question of what the state law of Louisiana is. What it is the decision of the Supreme Court of Louisiana conclusively settles. Such decision will not be reviewed by the Supreme Court of the United States. It is not a federal question.

Buena Vista County vs. Iowa Falls, etc., Co., 112 U. S., 165, 177:

"Other errors are assigned upon the record, relating, however, to matters of pleading and practice under the laws of the State, which, as they involve no federal question, are not proper for our consideration."

Yazoo Ry. Co. vs. Adams, 180 U. S., 1, 9;

"The Supreme Court will not inquire into questions relating to pleading and practice in the state courts."

Adkins vs. Arnold, 235 U. S., 417, 429:

"* * * as it appears that nothing more than a question of local pleading and practice was involved, the ruling (of the State Court) is not open to review in this court."

(VI) PLAINTIFF IN ERROR CANNOT QUESTION THE TITLE OF THE DEFENDANT UNDER THE FEDERAL MINING LAWS, BUT CAN MAINTAIN ITS WRIT OF ERROR ONLY BY ESTABLISHING ITS OWN TITLE—BY SHOWING THAT ITS PATENT EMBRACED THE LAND IN CONTROVERSY.

This is because,—

(1) While defendant claimed to have made a valid location under the federal mining statutes, the decision of the Supreme Court of Louisiana was in favor of and sustained such right, and

this court will review the decision of the state court only in so far as the same is *against* a federal right *claimed by the plaintiff in error.*

(2) The writ of error must be based wholly upon the right of the plaintiff in error. If his right is not valid,—i. e., the patent does not convey title to the land outside the lines of the Bristol survey, — plaintiff's right fails. Plaintiff in error cannot succeed by an attempt to show that the defendant had no title or right.

In *Hale vs. Gaines,* 22 How., 144, 160, in an action of ejectment, the plaintiff claimed title under a pre-emption act of Congress of 1814, and defendant claimed under a similar act of 1832.

The Supreme Court held that as the statute relied upon by the plaintiff in error did not sustain his right, the judgment of the state court must be affirmed as he could not question the title of the defendant in error under a different federal statute.

The Supreme Court said:

"the 25th section of the judiciary act only gives jurisdiction to this court in cases where the decision of the State court draws in question the validity of an authority exercised under the United States, and the decision is against its validity. Here, however, the decision was in favor of the defendant's entry, and sustained the authority exercised by the department of public lands, in allowing Belding's heirs to purchase. Moreover, the plaintiff in error is not in a condition to draw in question the validity of Belding's entry. He relies on an outstanding title in

the United States to defeat the action. Being a trespasser, without title in himself, he cannot be heard to set up such title. 'To give jurisdiction to this court, the party must claim for himself, and not for a third person, in whose title he has no interest.' *Henderson vs. Tennessee,* 10 How., 323. The plaintiff in error must claim (for himself) some title, right, privilege, or exemption, under an act of Congress, &c., and the decision must be against his claim, to give this court jurisdiction. Setting up a title in the United States, by way of defense, is not claiming a personal interest affecting the subject in litigation. This is the established construction of the 25th section of the judiciary act. *Montgomery vs. Hernandis,* 12 Whea., 132."

(VII) IF, HOWEVER, THE QUESTION WAS REVIEWABLE, THE SAME RESULT WOULD FOLLOW AN EXAMINATION OF THE FACTS:

(a) Judge Provosty's opinion admits that our mere possession would be sufficient as against a mere intruder,

but

not as against plaintiff,
because the plaintiff has
"color of title."

BUT HAS THE PLAINTIFF ANY COLOR OF TITLE?

The fact is, its "color" merely consists in *claiming* that a certain line of Bristol is a meander line which marked the sinuosities of Jeems Bayou; whereas the

court below and the facts demonstrate that it is *not* a meander line in that sense but only a boundary line showing one of the lines of Pitt's property.

The Supreme Court of the United States in *Wright vs. Mattison,* 18 How., 56, defined "color of title" as—

> "that which in appearance is title, but which in reality is no title";

and as an illustration they cite the case of a conveyance covering the land in dispute which would give a color of title even though the title should subsequently be held to be defective. But to *give color* without actual possession there must be a conveyance of the land in controversy.

Washburn on Real Property, Sec. 1954, 1981:

> "Therefore color of title must be a written instrument purporting to convey the land and describing it." (p. 141.)

In this case there is *no* conveyance of the land in controversy. What the plaintiff claims to be a meander line of the Jeems Bayou, the court below held was not a meander line at all, and an examination of the maps and the facts and the authorities in the case fully sustain that position.

THEREFORE

the plaintiff in this case did not, when it brought this action, have either the possession or the right of possession or color of title to the land in controversy,

(b) Judge Provosty held that the defendants here had no title whatever, and added that they were

"without any right whatever" (Rec., p. 141)

at the time of the institution of the present suit.

The majority opinion held directly to the contrary and we submit an examination will so prove.

Let us see.

The defendants, the record shows (39, 135) were in possession of the land April 2, 1910 (in *actual* possession), and that this was prior to the time of the acquisition by plaintiff of its alleged title, which was on April 15, 1910. The defendants, when the plaintiff bought, had *actual* possession of the land in dispute and had fenced it in and were searching for oil. They had located under the laws of the United States as to the location of mining lands and were searching for oil, which they found. Neither plaintiff nor any of its ancestors in the title ever had possession of any portion of the land in dispute; and so the admission in the case distinctly states (Record, p. 39):

> "It is admitted by both parties that J. S. Noel was in possession, as owner, from the date of his purchase in 1880, to the sale to the plaintiffs of the property known as the Wilson's Point place, his corporeal possession being limited on the East and North by the Bristol meander line, and said Noel never exercised any acts of corporal possession, or was ever in occupancy of any land in Section Four, East of or outside of the said meander line,

or of any of the land in controversy. This is not intended to apply to any other land west of the land in controversy. That Noel's possession was vested by act of purchase and continued by occupancy in the plaintiffs.

"It is further admitted that defendants on the second day of April, 1910, took actual possession of, and posted and filed notices of location under the placer mining laws of the United States, of the tract of land on which they are now in possession, and concerning which this suit is brought.

* * *

"It is admitted that since the institution of this suit that the defendants have actually discovered oil and gas and are now producing oil from said property."

Mr. Justice Miller, of the Supreme Court of the United States, in *Crossman vs. Pendery, et al.,* 8 Fed., 693, 694, held as follows:

"The question submitted to the court is this: Can prospectors on the public mineral domain acquire any right in which the law will protect them prior to the discovery of mineral in rock in place? And, if so, can plaintiffs, being prior locators, recover against defendants, who first discovered mineral on the ground in controversy?

"It is the opinion of the court that inasmuch as the plaintiffs allowed the defendants to enter upon their claim and within their boundaries and there sink a shaft, in which they discovered mineral in rock in place before a discovery by plaintiffs, and make location thereof, without protest, the defendants now have the better right. But the plaintiffs might have protected their actual posses-

sion of their entire claim by proper legal proceeding prior to the discovery of mineral by the defendants, or by either party.

"A prospector on the public mineral domain may protect himself in the possession of his pedis possessionis while he is searching for mineral. His possession so held is good as a possessory title against all the world, except the government of the United States."

This same doctrine was announced in

Cosmos Exploration Co. vs. Gray Eagle Oil Co., 112 Fed., 14, affirmed in 190 U. S., 301.

Is it not plain that our exclusive possession of the land in dispute under a valid location as prescribed by the United States laws and a bona fide search for oil would enable us to defend the possession against every one except the United States—the then real owner?

Chrisman vs. Miller, 197 U. S., 313:

In this case Miller, the plaintiff, on December 31, 1896, made an entry and a location of an entire quarter section of land, and immediately commenced sinking wells for oil, but when the location was made, *he had not discovered oil.* The finding was that after September 7, 1897, the plaintiff was engaged in working, developing and mining the territory and extracting petroleum therefrom.

The defendant, on January 1, 1897, entered and attempted to make a location of certain portions of the quarter section. It also appeared that at an earlier date, on June 14, 1895, one Bariu, and others, attempted

to make a mineral location upon the tract, but that their rights were assigned by them to the plaintiff, and the plaintiff, before making his location, relinquished all rights under the Bariu title.

In an action to quiet title the court held that the plaintiff had a prior right; that prior to the discovery of oil, one was lawfully entitled to enter upon unoccupied land and prospect for oil, and his possession could not be interfered with.

See to the same effect:

Cosmos Exploration Co. vs. Gray Eagle Co., 112 Fed., 4, 14, affirmed in 190 U. S., 301.
Fulkerson vs. Chisna Mining Co., 122 Fed., 782.
Parley's Park Mining Co. vs. Kerr, 130 U. S., 256;
Belk vs. Meagher, 104 U. S., 279;
Gwilliam vs. Donnellan, 115 U. S., 45, 49;
McLenemore vs. Express Oil Co., 158 Cal., 551;
Miller vs. Chrisman, 140 Cal., 440, 446-447.

The discovery of oil may be made after the location, and the title will relate back to the date of locating the claim.

Mining Company vs. Tunnel Company, 196 U. S., 337, 348, 349, 353.

The Right to Patent for Oil Lands.

The Act of May 10, 1872 (17 Stat. at Large, 91; Rev. Stat., Sec. 2319), provides:

"Sec. 1. That all valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and purchase, and the lands in

which they are found to occupation and purchase, by citizens of the United States and those who have declared their intention to become such, under regulations prescribed by law, and according to the local customs or rules of miners, in the several mining-districts, so far as the same are applicable and not inconsistent with the laws of the United States.

"Sec. 2. That mining-claims upon veins or lodes of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits heretofore located, shall be governed as to length along the vein or lode by the customs, regulations, and laws in force at the date of their location."

Section 6 provides that in order to obtain a patent the claimant shall file in the proper Land Office an application under oath, showing compliance with this act, together with the plat and field notes of the claim made under the direction of the United States surveyor-general, showing accurately the boundaries of the claim which shall be distinctly marked by monuments on the ground, and shall post a copy of such plat, together with a notice of such application for a patent in a conspicuous place on the land embraced in such plat, previous to the filing of the application for a patent.

Act of February 11, 1897 (29 Stat. at Large, 526; Rev. Stat., Sec. 2333), provides:

"That any person authorized to enter lands under the mining laws of the United States may enter and obtain patent to lands containing petroleum or other mineral oils, and chiefly valuable therefor, under the provisions of the laws relating to placer mineral claims."

Act of July 9, 1870, Sec. 12 (16 Stat. at Large, 217; Rev. Stat., Sec. 2329), provides:

> "Claims usually called 'placers,' including all forms of deposit, excepting veins of quartz, or other rock in place, shall be subject to entry and patent, under like circumstances and conditions, and upon similar proceedings, as are provided for vein or lode claims; but where the lands have been previously surveyed by the United States the entry in its exterior limits shall conform to the legal subdivisions of the public lands."

In a note under this section it is said:

> "Oil lands are open to entry under the provisions of this section and sections 2330-2333, by Act Feb. 11, 1897."

The Act of March 2, 1911 (36 Stat. at Large, p. 1015), provides:

> "That in no case shall patent be denied to or for any lands heretofore located or claimed under the mining laws of the United States containing petroleum, mineral oil, or gas solely because of any transfer or assignment thereof or of any interest or interests therein by the original locator or locators, or any of them, to any qualified persons or person, or corporation, prior to discovery of oil or gas therein, but if such claim is in all other respects valid and regular, patent therefor not exceeding one hundred and sixty acres in any one claim shall issue to the holder or holders thereof, as in other cases."

(VIII) There is no proof that there ever was such a removal of an alleged raft in the Red River which changed the water line of Jeems Bayou near lot No. One (1), as claimed in the Seventh Assignment of Error.

The claim of plaintiff, that under the state law of Louisiana the Court below should have taken judicial notice of such alleged fact, is not correct, and if it were, it is a state, and not a federal, question.

The admission of the plaintiff that this land in controversy was high land when the survey was made is a complete answer to this claim.

In *Brown vs. Piper,* 91 U. S., 37, 42, this court considered the question of what the court will take judicial notice of,—limited it to matters of universal and undoubted publicity, and added:

> "This power is to be exercised by courts with caution. Care must be taken that the requisite notoriety exists. Every reasonable doubt upon the subject should be resolved promptly in the negative."

See also,

United States vs. Rio Grande Irrigation Co., 174 U. S., 697.

The court cannot take judicial notice of the nature and extent of tide lands or mud flats:

Baer vs. Moran Bros. Co., 153 U. S., 287.

Certainly it seems plain that the effect of an alleged change (made long prior to this suit) in the Red River, upon the front of the land adjoining lot No. 1, Section Four (a special and particular question) —is not a matter the court could take judicial notice of. This land in controversy is only one of hundreds of similar parcels which would be affected.

But even if it is a question, it is one under the laws of Louisiana and does not raise a federal question.

The claim of the plaintiff is that this arises under the state laws of Louisiana.

But another answer is, this contention is flatly contradicted by the admission of the facts (Record, p. 39):

> "It is admitted by both parties that the land in controversy *is high land* and *was high land,* at the date that Bristol made his survey in 1871."

EUGENE MACKEY,
D. T. WATSON.

Office Supreme Court,
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IN THE

Supreme Court of the United States

No. 165 OCTOBER TERM, 1914.

THE PRODUCERS OIL COMPANY, Plaintiff in Error,

vs.

LYDIA HANZEN, SAM W. MASON, DILLARD P. EUBANK, ROBERT L. STRINGFELLOW and EARL H. BARNES, Defendants in Error.

In Error to the Supreme Court of the State of Louisiana.

BRIEF OF DEFENDANTS IN ERROR IN REPLY TO PLAINTIFF'S SUPPLEMENTAL BRIEF.

EUGENE MACKEY,
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Attorneys for Defendants in Error.

Smith Bros. Co. Inc., Franklin Print, 407-9 Grant Street, Pittsburgh, Pa.

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In Error to the Supreme Court of the State of Louisiana.

Statement of Facts.

The so-called—

"Supplemental Brief for Plaintiff in Error"

was filed Monday, March 1, 1915, without notice to us and without serving us with a copy. Not knowing of this supplemental brief and after waiting in court on Monday, Tuesday and Wednesday for argument, on the latter day, Wednesday, March 3rd, at the urgent request of counsel for the plaintiff in error, we agreed to and did submit the case without argument. We did

this, not only not knowing, of the supplemental brief being filed but without any intimation of any kind of *the changed position* taken in that brief from that taken in the main brief of the plaintiff in error in this court.

On Saturday, March 13th, 1915, we first learned that such a brief had been filed, and we obtained a copy thereof from the plaintiff, and on reading it learned that the positions taken there were not discussed in the plaintiff in error's original brief; that the attempt in this supplemental brief was made to show that the Supreme Court of Louisiana had committed several errors;

(1) that these alleged errors related to the plaintiff's chain of title;

(2) in that, as the plaintiff alleged, the Supreme Court of Louisiana disregarded the so-called Bristol map upon which plaintiff relied;

(3) and in new criticisms of the opinion of the Supreme Court of Louisiana.

No one of these new positions was the subject of any one of the assignments of error (for the assignments, see Record, pp. 147-148), or was argued in the original brief of plaintiffs.

Our reply to that supplemental brief is as follows:

Argument.

I.

The first complaint in that brief is that the court below erred in saying in its opinion that (Record, p. 127),—

> "Plaintiff traces its title to Alfred Wilson, February 21, 1858, when one of its vendors acquired * * * all improvements * * * on * * * the S. E. ¼ of the S. W. ¼, and the S. W. ¼ of the S. E. ¼ of Section No. 4, and other lands in section Nine, Township Twenty, Range 16 West."

How does the plaintiff attempt to prove this alleged mistake?

Only by referring to its petition and disregarding the evidence that plaintiff itself offered in the trial court, by which it *did trace the* title back to Alfred Wilson, just as the court said.

The court did not say that such claim of title was made in the plaintiff's petition, but what it did say was:

> "Plaintiff traces its title to Alfred Wilson;"

and this is just what it did.

The record in this case (pp. 38-39) shows that the plaintiff traced its title back to Alfred Wilson as follows:

The plaintiff's offers were:

(a) Noel to the Producers Oil Company:

(b) Wulsch (Walsch) to Noel;

This was Exhibit "B," and it appears in the record on page 17, where the deed from Walsch to Noel recites that the property is—

"The place known as the Wilson Point in Caddo Parish, Louisiana. Bought of E. Austion and the heirs of T. H. Pitts, deceased, as per family meeting and numbered as follows:"

(c) ... .Pitts to .....Wulsch (Walsch),—

"To be filed in evidence and marked Exhibit 'C' ".

Now, Exhibit "C" is printed at length in the record (pp. 18-19), and it is a conveyance in 1880 from—

"Madam Ann Pitts, Tutrix of the minor,
Lucy C. Pitts,"
—to—
"Charles F. Walsch;"

(d) Patent from the United States to Thomas H. Pitts for lots 1 and 2 of Section 4, marked Exhibit "E" and found at length on pages 21 and 22 of the Record;

(e) Copy of the plat of the Bristol survey and four other surveys;

(f) "Counsel for plaintiff offered in evidence the field notes and process verbal of the Bristol survey and other documents attached relative to the survey of what is known as Wilson's Point, certified to August 3, 1910, by Fred J. Grace, Register, pages 1 to 20, inclusive.

"Filed in evidence and market Exhibit 'G.'"

Now, Exhibit "G" consists of a number of letters, etc., to be found on pages 23, 24, 25, 26 and 27 of the Record, and those letters, among other things (see letter of Ro. T. Buckner to John Lynch, Suveyor General, dated April 13, 1871, page 24 of Record), requested a survey of the place known as

"Wilson Point"

and described it particularly in this way:

"I send herewith a description of the land from which you can make your estimate of the amount to be deposited.

"You will greatly oblige me by an early reply, as one Peter Cracker is endeavoring to enter this land notwithstanding the fact, as you will see, that Mrs. Pitts bought it with the improvements *thirteen* years ago (1858), and has had undisputed possession ever since, and I am very anxious to defeat so unjust proceedings."

Then follows this enclosure in this letter, which the plaintiff itself offered in evidence in the court below:

"Alfred Wilson
to
Ann Pitts.

"All the improvement lying on and about the following described land, to wit: The S. E. ¼ of the S. W. ¼ and the S. W. ¼ of the S. E. ¼ of section No. 4, and East ½ of N. W. ¼ and West ½ of N. E. ¼ of section 9, Township 20, Range 16 West of Northwestern land District of Louisiana, containing 160 acres, more or less, the fractional losses being considered."

Then again, still part of Exhibit "G," on pages 24 and 25 of the record and offered in evidence by the plaintiff, a letter of R. T. Buckner from the same Ro. T. Buckner, dated April 14, 1871, in which he says:

"Peter Crocker is making every effort to enter the Wilson Place and turn Eliza and Mr. Pitts (out) of a house and home. * * * Mr. Pitts has a fine growing crop on the place and has a prospect of doing well, if he is only quieted in his possession."

Is it not, then, clear that the land that Bristol surveyed for Mr. Pitts was the identical land which Alfred Wilson sold in 1858 with the improvements to Mrs. Pitts?

Judge Provosty says in his dissenting opinion that Thomas H. Pitts was the son of Stephen D. Pitts, who

probably was the husband of Ann Pitts and the father of Lucy Pitts, though there is no direct proof in the record to show that. But it is certain that however Thomas H. Pitts got the title from Mrs. Pitts, to whom Alfred Wilson originally conveyed, he did get it in some way, either as the son or the grantee, for he combined this claim that Alfred Wilson had by improvements and also that his father and mother, Stephen D. Pitts and Ann Pitts, respectively, had by possession, and this was followed up with a patent from the United States.

Walsch (Exhibit "B", page 17), claimed through, *inter alia*,—

> "the heirs of T. H. Pitts, deceased,"

and he claims that they had a family meeting, at which family meeting the land was conveyed to him; and then we find in Exhibit "C" that Ann Pitts had at (19)—

> "a family meeting held Nov. 4, 1880, authorizing her to do so,"

conveyed all the interest of Lucy Pitts to Walsch in that property.

The relations between Eliza Pitts, Stephen D. Pitts, Lucy Pitts, Ann Pitts and Thomas H. Pitts are not clearly defined in the case, but it is certain that, as we have already shown, when the survey was asked for, it was the *survey of the land which Alfred Wilson had conveyed to Mrs. Pitts.*

Is it not clear, then, that the plaintiff in error in this supplemental brief, alleging error of the court in

saying that it traced its title back to Alfred Wilson, *was itself mistaken,* and that the Supreme Court of Louisiana was right, and this averment in the supplemental brief is wrong?

In addition, as we have said *supra,* the question is entirely immaterial, and even the plaintiff in error does not allege how it could have been harmed by the same.

II.

The second and sixth positions may be combined as this:

That in the decision of the case, the lower court disregarded the real claim of the plaintiff, which was demonstrated by the Bristol map: that this map showed a meander line on the east and north of lot No. One, demonstrating that the eastern and northern lines of lot No. One were meander lines, clearly indicating that the waters of James Bayou were the boundary lines of lot No. One.

Is it true, then,—

(a) That the court below did disregard the real claim of the plaintiff as to the meander line?

(b) Does the Bristol plat designate the waters of James Bayou as the boundary line of lot No. One?

(a) Did the court disregard the real claim of the plaintiff?

On pages 127 and 128, the majority opinion of the court with precision states plaintiff's claim, which in brief was that lot No. 1 in section 4, which according to the Bristol map contained 12.84 acres—

> "as shown by a survey made by Deputy Surveyor Bristol on the map attached hereto" (see Opinion of Court, page 127 of Record),

as a fact contained not only the 12.84 acres but, in addition, some 40 acres more as claimed by the plaintiff, and some 87 acres as claimed by the defendant, and on page 128 the opinion explicitly states that the—

> "plaintiff contends that being the owner and in possession of lot No. 1, bounded by the meander line of Bristol survey on the east and north, that it is and was in constructive possession of all the property to the east and north of Bristol's meander line to the water's edge * * *"

The land in dispute the court calls attention to, is shown by a survey made by Williams on behalf of the plaintiff and by Barnes on behalf of the defendant, and their maps, which were in evidence in the case (the plaintiff offering the Williams map), show on their faces the actual traverse lines of Bristol's survey as shown on the Bristol map.

Again, on page 129, the court said:

> "The possession of the land in controversy contended for by plaintiff is a constructive, and

not an actual, possession of that land. It admits that it and its authors in title never were in actual occupancy of said land; but it claims that it is and was in actual occupancy of lot No. One as defined on the notes of Surveyor Bristol, and that it is and was in constructive possession of the remainder of the land between the established meander line and James Bayou on the east and north of said lot."

Again, on the same page (129) the court said:

"Plaintiff claims possession of the land in this suit as owner; and it produces a title from the United States Government showing it to be the owner of lot No. One, containing 12.84 acres, and it claims the additional 40 or 87 acres, as the case may be, as a part of lot No. One, lying between the Bristol meander line and James Bayou; treating said meander line as a regular meander line, and not a boundary line."

Then the court, on page 130, proceeds to treat of the question whether the meander line established by Bristol on the east and north of lot No. 1 was a real meander line which carried the boundary of lot No. 1 to the waters of James Bayou and thus increased the contents of lot No. 1 by at least 40 to 45 acres, and it tested the question as to whether it was a real meander line by citing from the cases in this court, and especially from the case of the *Railroad Co. vs. Schurmeir,* 7 Wall., 272, and *Niles vs. Cedar Point Club,* 175 U. S., 300.

Again, on page 135 of the record, the court said:

> "We say here that if the eastern and northern boundaries of lot No. 1 were taken out and other boundaries substituted, so as to reach James Bayou, plaintiff would get three to seven fold more land than was actually mentioned and described in the patent conveying this lot, or than its ancestor in title supposed he was purchasing, or than he actually paid for."

Again, on pages 135 and 136, the fourth and fifth propositions in the syllabus distinctly state that the question of what a meander line was, and what the consequences of it were, and what the facts necessary to show it were, was fully understood and considered by the court.

> It is therefore clear that the court understood and considered what the plaintiff's claim was.

But did the court disregard the Bristol map?

The supplemental brief is full of averments of facts not contained in the Record, and it may therefore be stated that during the argument in the Court below the plaintiff and defendant both used and the court had before it the Bristol map just as it is printed in the Appendix to the brief of plaintiff in error. During the oral argument it was used by both sides. This Bristol map was made at the Land Office from the Bristol notes, but, considering the map itself *aside from the*

Bristol notes, it was not claimed by the plaintiff that *of itself* it showed the lines of lot No. One to be real meander lines.

Indeed such a claim could not truthfully have been made.

Look at the Bristol map in plaintiff's appendix and this is plain. The map nowhere says meander. There is nothing on it to indicate that. The water line on that map is merely a straight line. It has no sinuosities. Its location by the Land Office was purely conjectural, *because* Bristol's survey did not locate the water or give any means of doing so in section Four (4). The sole designation (see Record, p. 29) in Bristol's notes is in section three (3), where he says:

"Arm of James Bayou one chain North of line."

It was the Bristol notes of survey, where he speaks of meander lines, the plaintiff did and must rely upon.

Now the Bristol map is not made to scale. It is small and quite difficult to follow the survey lines. On these lines no courses and distances are given. These are in a separate column. It was not made by Bristol but in the Land Office.

Realizing these difficulties about the Bristol map, the plaintiff had made and introduced in evidence the Williams map, which is Exhibit "H" (see Appendix, plaintiff in error). On this Williams map, which

greatly enlarged the Bristol map, the *plaintiff traced the Bristol survey lines,* giving to each portion of the line the courses *according to the survey of Bristol,* and also locating the water of James Bayou at the time of the Williams survey in 1910.

This is the Williams map which the opinion of the court refers to on pages 130 and 131 of the Record, and which the plaintiff in error now complains of the court for referring to. It shows the traverse lines of Bristol's survey much more clearly and intelligently than the little Bristol map; and as the plaintiff in error *itself introduced this map in the court below, and relied upon it, surely the reference of the court to it cannot be complained of, at least by the plaintiff itself.*

Then, in the court below the defendants, without objection from plaintiff (Record, page 71), introduced another map, called the Barnes map, showing the Bristol traverse line in green, very much enlarged from the small Bristol map. The Barnes map and the Williams map show the same location that the Bristol map did of Bristol's traverse lines so far as lot No. One (the lot in question) was concerned, except that, as shown on the combination map the starting point of each was a little different, and the agreement of facts states that difference is to be arranged hereafter (Record, p. 39. In the combination map we distinctly showed in red lines the Bristol survey lines of lot 1 as the Williams' map showed them. This Barnes' map is the map referred to by the court as the map of the defendants, and the yellow line on the Barnes' map shows the defendants' claim, and clearly shows, very much enlarged, the traverse lines of Bristol as shown on the Bristol map and by the Bristol survey.

Now the map in the record (pp. 136-137) prepared by the defendants shows—

(a) The Bristol survey lines as shown on the Williams map, the Bristol map and the Barnes map;

(b) The Williams survey lines;

(c) The Barnes survey lines;

and shows the Williams location of water. On this map the Bristol survey line is shown in red and the courses and distances of the Bristol survey (the whole Bristol survey lines) are given; and then, in connecnection with the claim of the defendants that the Bristol survey lines were run to include the Pitts' improvements and were not intended to run to the waters of James Bayou, the Pitts' improvements, as shown by the Bristol survey notes, were indicated on this map.

This combined map shows accurately what the Williams map showed, what the Barnes map showed, what the little Bristol map showed, and what it did was—

(1) To combine the three survey lines on one map so that the court could see what the different claims made by the plaintiff and defendants were;

(2) To so enlarge the survey lines on the Bristol map that these lines could be more intelligently and easily followed than on the very small Bristol map;

(3) To show that the Bristol survey lines were run to include Pitts' improvements, and were not intended to meander the waters of James Bayou.

Now, this is the map that the plaintiff claims the court used, disregarding and overlooking the Bristol map on which the plaintiff *now* says it relied.

But see how misleading its position is:

(1) The Williams map and the Barnes map each showed the survey lines of Bristol, just as the small Bristol map did, but greatly enlarged so as to be easily read and followed.

When the court referred to the Williams map and the Barnes map, it of necessity referred to the Bristol map, for that Bristol map, showing the Bristol survey lines, was reproduced on the Williams map and the Barnes map.

How was that disregarding the Bristol map?

The Bristol map being so small and difficult to follow, each side submitted the survey lines of that map greatly enlarged so as to be more easily understood.

Is that disregarding the Bristol map?

On the contrary, is it not emphasizing it?

The combined map showed the Bristol survey lines as on the Bristol map but much enlarged.

In looking at this combined map, did not the Court look at the *Bristol map lines enlarged and more easily read?*

ATTENTION IS CALLED TO THIS:

How does the plaintiff show that its claim was not fully considered by showing that neither Barnes nor Williams could accurately find the starting point of the Bristol survey? The Barnes and Williams maps and their surveys followed exactly the lines of the Bristol survey, and their maps show exactly the shape of Lot No. One as the small Bristol map does.

Now, an error by Barnes and Williams in the starting point would not change the contour and the shape of the Bristol survey of Lot No. One. Their maps show, just as the small Bristol map does, by the shape and contour of Lot No. One, that its traverse lines do not meander the water of James Bayou and do not include this large area of land between the traverse lines and the water which the plaintiff now claims.

The alleged mistake in starting would not add to or detract from that evident fact.

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(2) On page 4 of the supplemental brief, it is said that the map in the record—

> "is supposed to represent his idea as to how the *locus in quo* would be represented by the superposition on the Bristol official survey of 1871 of

the maps of Barnes, the defendant surveyor, and the map of Williams. This superposition is purely fictitious, as appears from the following testimony of Barnes."

The testimony of Barnes cited is that there are no marks on the ground left there by Bristol so as to indicate his lines and his corners, and therefore now, says the plaintiff, he could not have run the Bristol lines.

But if that is so, why did the plaintiff have Williams in 1910 run the survey or traverse lines of Bristol, and, with the Bristol map before it, actually plot the Bristol survey?

Why offer that work of Williams and Williams' map in evidence?

Out of the plaintiff's own mouth, the error of its now new position is demonstrated.

But the survey or traverse lines of Bristol's survey and map were accurately shown on the Barnes map because Barnes' evidence cited by plaintiff (Supplemental Brief, p. 4), shows that he did get a starting point:

"* * * we had to run in there from a section further east and north,"

to get the starting point.

Interrogated as to this Barnes' map, Mr. Barnes testified (page 76 of record):

"Q. When you run these lines how long did it take you to run it?
A. I was a little over three days locating this claim and the lines all around it.
Q. That is finding the starting point and all?
A. That is finding the *starting point* and all."

From this starting point further east and north, it was easy to locate Bristol's starting point, which was the corner between Sections 2, 3, 10 and 11. See Record, p. 28, where Bristol says:

> "I commence at the corner to Secs. 2 and 3, 10 and 11."

From this starting point it was easy to run Bristol's lines from Bristol's notes.

Then, too, the actual possession of Pitts and those under him of the land shown, inside of Bristol's survey lines and the admission of facts (Record, p. 39), among other things, was:

> "It is admitted by both parties that J. S. Noel was in possession as owner from the date of his purchase in 1880 to the sale to the plaintiffs of the property known as the Wilson Point place, his corporeal possession being limited on the East and North by the Bristol meander line, and said Noel never exercised any acts of corporal possession, or was ever in occupancy of any land in section Four, east of or outside of the said meander line."

This is quoted in the court's opinion (Record, p. 128).

Here is a distinct recognition that the possession was in accord with the Bristol survey lines around lot One (1).

Would that not show some of the Bristol lines?

When the court, then, said (Record, pp. 130-131):

> "A glance at the annexed map, taken from the Williams and Barnes maps in the record, (Bristol made no map or plat, and the one made by the draftsman in the Land Office is very small and apparently without reference to a scale), shows that the Bristol meander line does not purport to define the sinuosities of a stream; it is not represented as the border line of a stream; and it shows, to a demonstration, that the meander line, as actually run on the land on the east and northeast of lot No. 1, is the boundary, and that a water course is not the boundary,"

it is evident the court was looking at the actual traverse lines of Bristol as shown on the Bristol map,—those lines much enlarged and much plainer and much more easily understood. What the court said in brackets about the small Bristol map, that—

> "(Bristol made no map or plat, and the one made by the draftsman in the Land Office is very small and apparently without reference to a scale),"

is exactly true;

—and then the court said—

that the annexed map, i. e., hereinbefore described, and on which, greatly enlarged, Bristol's traverse lines are shown as the maps of both Williams and Barnes show them,—

> "shows that the Bristol meander line does not purport to define the sinuosities of a stream; it is not represented as the border line of a stream; and it shows, to a demonstration, that the meander line, as actually run on the land on the east and northeast of lot No. 1, is the boundary, and that a water course is not the boundary."

So it is—

"the Bristol meander line"

which the court considers.

Now there was no dispute (except as to the starting point, ante, p. 13), in the court below, nor is there here, as to what that Bristol line was and where it ran, and what the shape of lot No. 1 was. It was shown exactly the same on the Williams' map, which the plaintiff made,—on the Barnes' map, which the defendants made,—on the very small Bristol map made in the Land Office,—and on the combined map which the court annexed to its opinion.

There is no difference.

We invite the closest comparison to demonstrate that.

So here again this Supplemental Brief is convicted of error.

The Court did not ignore the Bristol map.

It heard it referred to *ad nauseam* in the oral argument.

It had it before it on the Bench and handled it.

It had it enlarged in the Williams map,—in the Barnes map,—in the combined map, and thus more easily and readily comprehended.

SMALL BRISTOL MAP.

Please look at the small Bristol map and see how thoroughly the plaintiff is answered, when it now says that that map of itself shows the lines of lot One (1) were meander lines, giving the waters of James Bayou as the boundary lines on its north and east.

An inspection of that small Bristol map shows directly the contrary of what the plaintiff claims. The so-called water line on that map was not surveyed by Bristol,—was not located by him. It is a straight line put on in the Land Office and of necessity is purely conjectural. It has no sinuosities. In no respect does it correspond to the sinuosities as shown by the Bristol traverse lines around lot No. One.

Please examine the little Bristol map and see how true this is.

III.

On pages 5 and 6 of this Supplemental Brief, plaintiff says:—

> "According to Bristol's official survey the following facts are patent, both on the plat and the field notes:"

We deny this, and say that no one of the inferences thus drawn is correct.

Let us look at each of these inferences:

FIRST. Neither the Bristol plat or notes of survey refers to the plat Exhibit No. 5 said to show a survey prior to 1839, which plat No. 5 admittedly did not include or show section 4 where lot No. 1 is located.

There is no evidence that Bristol ever saw that Exhibit No. 5 plat or that it was in any way connected with his survey. That plat did not include or cover either sections 4 or 9 on the Bristol map, and as the controversy here only involves lot No. 1 in section 4, the relevancy of its now being discussed in this Supplemental Brief is not apparent.

There is on the Bristol map a dotted line, but neither the Bristol map nor the notes on it nor any other evidence in the case shows what that line is, what it is intended to show, or what its significance is as to the points before this court. Bristol never put that

dotted line on; it is not noticed in his notes of survey. It must have been put on in the Land Office, but why and by whom is not shown.

But assuming Bristol did know of this plat Exhibit 5, of what possible significance is it in answering the sole question before this court:

> Did the Government by its patent convey to Pitts in lot 1 only 12.84 acres, or that amount plus 40 to 87 acres more?

SECOND. The plaintiff in this Supplemental Brief (p. 5) in its second position or inference that there was no surveyable land in section 4, north of the section line dividing it from section 9, states as a fact that which is not only not supported by the evidence but is contradicted and overwhelmed by that evidence.

The Bristol official survey, as the plat made in the Land Office shows it, distinctly shows land between the north and east line of lot No. 1 and the water line of James Bayou.

What the plaintiff is seeking to recover is the land between the north and east lines of lot No. 1 and the waters of James Bayou, and that this was *high land*—not water, as the plaintiff now claims,—when Bristol made his survey, the plaintiff has admitted.

Its words are (Record, p. 39):—

> "It is admitted by both parties that the land in controversy is high land, and was high land at the date that Bristol made his survey, in 1871."

This argument of plaintiff is in direct denial of this broad unqualified admission.

The words are that—

" the *land in controversy* is high land and was high land at the date that Bristol made his survey in 1871."

It is not that—as plaintiff now contends—only part of such land, but all of such land is and was high land.

The stipulation was made before any evidence was offered, and what is meant by "the land in controversy" is shown and can only be shown by the pleadings. The petition (Rec., p. 1) avers that the United States sold to Pitts Lots 1 and 2, "forming a projection of land surrounded by three sides by the the waters of James Bayou"; that plaintiff acquired title thereto and defendants took possession of part of lot No. 1 and built a fence around it. The answer (Rec., p. 3) averred that the land of which they so took possession comprised 87 acres and described it and denied that it was part of lot No. 1, and averred that the land of which they took possession was high land.

We therefore have the plaintiff and defendants both claiming the land of which defendants took possession, —the 87 acres,—and this is the land in controversy.

And this is the high land in controversy.

Doubtless there was some marsh, as the notes of Bristol's survey indicate and the court found, but marsh is land, not water:

Niles vs. Cedar Point Club, 175 U. S. 300.

THE SLOUGH.

Instead of the evidence showing as averred in this Supplemental Brief on page 5, that the slough or arm of Jeems Bayou extends down into Section 9, it distinctly shows to the contrary, as follows:

That green or small cypress, such as Bristol, in his notes, speaks of finding, grows only on land where the water does not stand, and that it is the swell-butt cypress which grows in the water. That this slough referred to by Bristol was filled with green cypress, not swell-butt cypress, is stated in Bristol's own notes, and this and the further fact that such cypress does not grow in standing water appear from the testimony of plaintiff's witness, Hoffer (Record, 46), and by defendants' witnesses, Mason (Record, 116) and Barnes (Record, 60-66).

IV.

BARNES AND WILLIAMS MAPS.

On page 6 of this Supplemental Brief are two averments:

(a) That Barnes never knew the location of the Bristol survey, though Barnes swore he did and ran his lines accordingly;

(b) Still more astounding is the attack upon the survey and map of Williams, who was the

plaintiff's engineer and whose map it vouched for by offering it in evidence. It now says:

"The Williams survey does not purport to follow any of the lines or corners of the Bristol official survey."

Now turn to this Williams map:

It traces in detail around lot No. 1 the exact traverse lines of Bristol's survey as shown on the small Bristol map and the notes of Bristol's survey.

This was never questioned in the court below nor in the original brief of the plaintiff in this court. It is quite new and it is equally unqualifiedly erroneous.

Barnes distinctly stated that while the land-marks of Bristol were not found, he was able to get his start by—

"running from a section further east and north."

On page 76 of the Record, Barnes testified he did find

"the starting point"

and that he took

"half a day to get started."

But he did get his start in this way,—and he ran the Bristol lines which do exactly correspond with the Bristol notes of survey and the Bristol plat.

On page 66 of the Record, Barnes distinctly testified, speaking of his map,—

"The green line shows the Bristol survey of 1871."

On page 6 of this Supplemental Brief, the plaintiff contends as following his preceding points, that—

"* * * the plaintiff's rights were adjudged" by what might be called a

"fictitious map,"

and the official plat of the United States was not used or referred to.

This view was not even hinted at in the plaintiff's original brief.

How utterly unfounded it is, we think we have already demonstrated.

The whole strength of the plaintiff's case was fully considered by the court below. The Bristol map in its small form—in its greatly enlarged form—was duly considered,—in its greatly enlarged form much more effectively presented and duly considered than if seen only in the small shape it originally presented.

COMMENT.

Reading the entire supplemental brief, wherein does the plaintiff attempt to prove that the patent of the United States to Pitts and the Bristol map and the Bristol survey show that the purpose was to make the waters of Jeems Bayou the boundary lines of lot No. 1; that the Bristol lines run on the north and east of lot No. 1 were truly meander lines and intended to indicate, not a survey line or a boundary line, but the waters of Jeems Bayou?

The reply is that there is not a single paragraph in the whole supplemental brief which attempts to prove that.

There are assertions and re-assertions, but there is not a paragraph in this new brief which attempts to prove that result. The whole supplemental brief is a hypercritical review of alleged inaccurate statements in the Opinion of the court below, and an attempt to raise entirely unimportant points out of disconnected matters, all of which are irrelevant to the point this court has to decide, and none of which are correct.

For what is the question before this Court? It is this:

Did the United States by its patent intend to and did it convey to Pitts, under whom the plaintiff claims, the forty to eighty-seven acres of land now claimed by the plaintiff as part of lot No. 1, in addition to the 12.84 acres plainly marked on the Bristol map as the contents of lot No. 1?

The plaintiff says it did.

It asserts that while the map itself shows on its face that lot No. 1 only contained 12.84 acres, yet the traverse lines of Bristol around this lot were true meander lines and clearly indicated that the waters of Jeems Bayou were the boundary lines of that lot, and hence included the additional land lying outside, which we say is 87 acres and the plaintiff says is 40 to 45 acres.

We say it did not.

We refer to our brief as fully considering and demonstrating that the United States never intended to and did not convey this additional 40 to 87 acres in addition to the 12.84 acres as part of lot No. 1.

The claim *now for the first time* advanced by the plaintiff in this supplemental brief, that the patent and the small Bristol map of themselves proved its claim, and this map the Court below disregarded, is refuted by reading the patent and looking at the small Bristol map.

The patent conveyed lot one (*inter alia*),—

"according to the official plat of the survey of said lands returned to the General Land Office by the Surveyor General."

The words,—

"according to the official plat,"

are, this court said in *Chapman vs. St. Francis,* 232 U. S., 186,—

"an important element."

Considering all the lots thereby conveyed, as comprising the total of 123.88 acres, and looking then at this *official plant, i. e.,* the Bristol map, we see demonstrated in different ways that all the United States intended to convey to Pitts when it conveyed lot No. 1 was only 12.84 acres,—

(a)—Because plainly in *red ink* on this small Bristol map the contents of lot No. 1 are given as 12.84 acres only,—and not 12.84 acres plus 40 to 87 acres additional;

(b)—The total acreage conveyed by the patent was 123.88 acres, and it was made up of lots Nos. 1, 2, 3 and 4 of Section 9 and lots Nos. 1 and 2 of Section 4;

(c)—Then, too, Pitts only paid for the 12.84 acres. He never claimed more. Now in 1910, for the first time, it is claimed Lot 1 contained 40 to 87 acres more, for which not one dollar was paid to the United States, and this is claimed, not by Pitt but by the Producers Oil Company.

Now add all together except lot 1 of Section 4, and we have a total of 111.04 acres. Deduct this 111.04 acres from 123.88 acres — the total acreage, — and we have left 12.84 acres,—exactly the acreage marked in red ink on the small Bristol map.

Take those facts and add to them (see our Brief)—

(a) That the Pitts' survey was made at Pitts' request to do two things:

(1) Survey 120 acres on which the old soldier's warrant for so many acres could be located;

(2) In this survey, to run around and cover all of Pitts' improvements;

The traverse lines of Bristol's survey did this as boundary lines;

—and again add—

(b) That looking alone at the small Bristol map (if plaintiff so insists), it is apparent that the United States treated the traverse lines of Bristol around lot No. 1 as real boundary lines and not as real meander lines.

That on this map was a mere conjectural water line put on in the Land Office,—Bristol did not run it or give any data by which it could be plotted. This water line is a straight line; it does not indicate any sinuosities of the banks of James Bayou; it does not correspond with a single course in the traverse line;

—and again add—

(c) That Bristol, instead of intending to include the land between his traverse line and the water, which is the land now in dispute, ran away from it.

At the course—

"S. 86½ degrees W.,"

he says—

"spur of marsh extend out North."

Instead of including that land in his survey he runs away from it and goes south, not north.

This of itself, in *Niles vs. Cedar Point,* 175 U. S., 300, was held to conclusively show his so-called meander line was a real boundary line and did not call for the water as the boundary.

And again add.

That what the plaintiff now claims to recover is 40 to 87 acres more than and in addition to the 12.84 acres which the Bristol plat shows was the whole contents of lot No. 1, Section 4—and this without paying one dollar for this extra land.

Is it not apparent that the plaintiff's claim is wholly unfounded and the court below was right in so holding?

In our brief—*purposely and as we think counsel in this Court are bound to do,*—we argued the question here for decision as if it were an original one.

We did refer to the opinion of the court below, but we presented our own views of the question here for decision aside from that opinion.

CASES OF HARDIN VS. JORDAN AND MITCHELL VS. SMALE, COMMENTED ON, ON PAGES 7-8 OF THE SUPPLEMENTAL BRIEF.

We have considered these cases in our brief, pages 81-83, and have demonstrated that the criticism that the court below made on these cases is sound, and that the plaintiff in this supplemental brief misapprehends the real questions there decided.

Both of those cases involve the same official plat, which plat did not show any meander or survey lines but represented the lots as fronting directly on the lake. *There was, therefore, no boundary apparent on the map except the lake, and a conveyance of the lots according to the plat necessarily conveyed the land to the water.*

The discussion in parts III and IV of plaintiff's supplemental brief as to the law of Louisiana, presents no questions for review by the court. It is sufficient to say that the Supreme Court of Louisiana, in holding that the Bristol line was not a true meander line, based its decision squarely upon the case adjudged by the Supreme Court of the United States.

Eugene Mackey
E. T. Watson
Attys for Defts in

In the Supreme Court of the United States.

OCTOBER TERM, 1914.

THE PRODUCERS OIL COMPANY, PLAINTIFF IN ERROR,
v.
LYDIA HANZEN, SAM W. MASON, DILLARD P. EUBANK, ROBERT L. STRINGFELLOW, AND EARL H. BARNES. } No. 165.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

SUGGESTION BY THE UNITED STATES.

The Solicitor General, on behalf of the United States as *amicus curiae*, respectfully represents to the court:

The land involved in this controversy and other similar areas in the vicinity of Ferry or Caddo Lake, in the State of Louisiana, were omitted from the original public land surveys. Since the discovery in recent years that lands in that section of the country were valuable for oil and gas, the Secretary of the Interior on December 15, 1908, caused all of the public lands in certain townships, including township 20 north, range 16 west, in which this land is located,

to be withdrawn from settlement, entry, and other forms of appropriation "in aid of such legislation as may hereafter be proposed or recommended"; and thereafter, the President, by his order of July 2, 1910, issued under the provisions of the act of June 25 of that year, ratified, confirmed, and continued in full force and effect the previous order of December 15, 1908.

The Secretary of the Interior has since caused investigations to be made, and has ascertained that at the time of the original public land surveys the so-called meander lines in many instances did not follow even approximately the line of mean high water, but were in fact run upon high and dry land, thus omitting from the survey lands that were equally as high and dry as those included therein.

Rights are now being asserted to the lands thus omitted from the original public land surveys, by persons claiming under mineral locations, and large quantities of oil and gas have been produced, to recover the value of which the Government is now contemplating the institution of appropriate legal proceedings.

The record in the present case, while indicating to some extent the Government's interest, by no means discloses it fully, and this suggestion of it is made not as bearing upon the merits of the particular controversy now presented but as a matter of possible interest to the court in guarding its opinion.

The pendency of this case was not learned by the Government until after its argument and submission.

Copies of the above suggestion have been served on counsel on both sides.

Respectfully submitted.

JOHN W. DAVIS,
Solicitor General.

JUNE, 1915.